# United States Court of Appeals for the Second Circuit



# APPELLANT'S APPENDIX

ORIGINAL 74-2651

B Pags

In The

### United States Court of Appeals

For The Second Circuit

UNITED STATES OF AMERICA.

Appellee,

- against -

ORLANDO MIRANDA, Also Known as "MANOLO,"

Defendant-Appellant.

On Appeal from the United States District Court for the Eastern District of New York

### APPENDIX FOR DEFENDANT-APPELLANT

IRVING ANOLIK

Attorney for Defendant-Appellant 225 Broadway New York, New York 10007 732-3050



(8017)

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### CRIMINAL DOCKET

# 74CR 409

-		TITLE	E OF C	ASE			АТТОНДО	D. J.	-
	THE	UNITEI	STA	ATES		For U. S.:		<u></u>	
		vs.				10.0.5.	Clayman		
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					PROCEEDINGS				4
-5-74	Before MISHLER,	CH.J.	- II	ndictmer	t filed				4 4
-5-74	Notice of Mot	ion for	re	duction	of bail (ret	June 6, 19	74)		
6-74	Before JUDD, J	case	cal	led - de	ft & counsel	Jerry Feld	nen .		1 1 200
	bresent - dert a	rraign	ed &	enters	a plea of no	t quilty -	Antes		3
	motion for reduc	CION 0	I DE	111 -mot	ion argued -	bail set a	\$50,000	3 1	
-10-74	surety bond - ca Notice of Appea	BE BO	a to	June 2	1, 1974 for n	otions.			
12-74									_
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13-74	Magistrate's fi	C9 74 1	M_79	4 Inser	ted into CR f	ile.			_
	for reduction of	f had?	Pall	ea- Def	and counsel	present- I	eft'smmot	ion	
	for reduction of Case addd to 7-	22-74	- Br	tniel -	Ball reduced	to \$30,000	.00 Suret	y .	

## 74CR 409

PROCEEDING Before JUDD, J. - Case called- Adjd to 7-22-74 at 10:00 for trial Before JUDD, J - case called - deft & counsel Paul Goldberger present - case adjd to 9-23-74 for trial - bail limits extended to Miami, Fla. Magistrates File 74M889 inserted into CR File Before JUDD, J .- Case called- Adjd to 9-24-74 BeforeJUDD J .- Case called- Deft and counse present- Trial ordered and begun Jurors selected and sworn- Govt opens- Deft opens- Trial contd to 9-25-74 at 10:00 A.M. Before JUDD, J - case called - deft & counsel Mortimer Todel present trial resumed - Trial contd to 9-30-74. Before JUDD, J - case called - deft & counsel present - trial resumed - Govt rests - Defts motion to dismiss argued and motion denied Deft rests - Both sides rest - deft renews motion for dismissal - denied trial contd to Oct. 1, 1974. Before Judd, J - case called - deft & counsel M. Todell present - Triel resumed - Deft sums up - Govt sums up - Judge Charges Jury - alternates discharged - Marshal sworn - Jury retires to deliberate at 12:15 PM. Order of Sustenance signed - Jury returns at 2:10 PM and renders a verdice of guilty on counts 1 and 2 - jury polled and jury discharged trial concluded - defts request for adjourned date within which to make motions to dismiss, etc. case adjd to Oct. 18, 1974 for motions sentence adjd without date - bail conditions contd, By Judd, J - Order of sustenance filed. Stenographers Transcript dated 9/25/74, 9/24/74 and 9/30/74 filed 4 Notice of Motion filed and Memorandum of Law for detringaside the verdict and entering a judgment of acquittal, etc. (ret. Oct. 18,1974) Before JUDD, J .- Case called- motion to set aside verdict adjd to 11/1/74 for motions Govts Memorandum of Law filed. Before JUDD, J .- Case called - Deft and counsel present - Motion to set saide verdict argued- decision reserved Stenographers Transcripts dated 10/1/74 filed By JUDD, J .- Memorandum and Order filed that the motion for a judgment of acquittal by the grant of a new trial is denied (copies sent to parties) By JUDD J .- Case called - Deft and counsel present - Deft sentenced to imprison

for a period of 6 years to run concurrent on counts 1 and 2 pursuant to

	Docket Entries 3a	5.8
DATE	PROCEEDINGS	
. —	T-18, U.S.C. Sec. 4208(a)(1) with eligibility for parele after 14	-
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r <del></del>	count 1- Execution of sentence stayed pending appeal- Deft advice	
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UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

X

74CR 409

UNITED STATES OF AMERICA

-against-

ORLANDO MIRANDA, Also Known As "MANOLO"

er.No.

(T. 21, USC \$841(a)(1); \$841(b)(1)(A) and \$812)

Defendant.

6-5-74

THE GRAND JURY CHARGES:

#### COUNT I

On or about the 25th day of March 1974, within the Eastern District of New York, the defendant ORLANDO MIRANDA, also known as "Manolo", knowingly, intentionally and unlawfully did distribute approximately 319 grams of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 841(a)(1), Section 841(b)(1)(A) and Section 812).

#### COUNT II

On or about the 25th day of March 1974, within the Eastern District of New York, the defendant ORLANDO MIRANDA, also known as "Manolo", knowingly, intentionally and unlawfully did possess with intent to distribute approximately 319 grams of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 841(a)(1); Section 841(b)(1)(A) and Section 812).

A TRUE BILL

PARTER

DAVID G. TRAGER 6, CEC

United States Attorney

LETTER OF UNITED STATES ATTORNEY DATED JUNE 21, 1974 5a IN RESPONSE TO DEFENDANT'S DEMAND FOR A BILL OF PARTICULAR United States Department of Austice ADDRESS REPLY TO NITED STATES ATTORNEY AND REFER TO INITIALS AND NUMBER UNITED STATES ATTORNEY BJF:CEC:bj EASTERN DISTRICT OF NEW YORK F# 741790 FEDERAL BUILDING BROOKLYN, N. Y. 11201 June 21, 1974 Mortimer Todel, Esq. One Rockefeller Plaza

New York, New York 10020

Re: United States v. Orlando Miranda Docket No. 74 CR 409

Dear Mr. Todel:

The following information is provided in response to your request for a Bill of Particulars and Discovery:

- 1. In the afternoon of March 25, 1974, in the vicinity of the Jaquar Lounge in Queens, New York.
- 2. This information will be provided at the appropriate time.
- 3. See No. 1, and also in the afternoon of April 2, 1974, in the vicinity of the Jaguar Lounge, Queens, New York.
  - 4. Enclosed.
- 5. As previously noted, the Government will supply the defendant transcripts of the tape recordings which are relevant to this matter as soon as said transcripts have been completed.
  - 6. Not relevant.
- The Government has no such information at the present time, but is aware of its continuing duty to supply such information when and if it becomes available.

Very truly yours,

DAVID G. TRAGER United States Attorney

Charles E. Clayman Assistant U.S. Attorney

Enclosure

### Letter of United States Attorney Dated June 21, 1975 &a In Response to Defendant's Demand For a Bill of Particular

REPORT OF DRUG PROPERTY COLLECTED, PURCHASED OR SEIZED

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7a EXCERPTS FROM TRANSCRIPT OF PROCEEDING BEFORE JUDD, D.J. 1 UNITED STATES DISTRICT COURT 2 EASTERN DISTRICT OF NEW YORK 3 ----X 4 UNITED STATES OF AMERICA, : 5 -against-: 74-CR-409 6 ORLANDO MIRANDA, 7 Defendant. : 8 ----X 9 10 United States Courthouse Brooklyn, New York 11 September 24, 1974 12 11:00 o'clock A.M. 13 14 Before: 15 HONORABLE ORRIN G. JUDD, U.S.D.J. 16 17 18

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HENRI LEGENDRE
ACTING OFFICIAL COURT REPORTER

#### Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: E. LEVIN-EPSTEIN, ESQ. Assistant U.S. Attorney

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MORTIMER TODEL, ESQ. Attorney for Defendant

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(Whereupon, 12 jurors were impanelled and two alternates sworn in by the Clerk of the Court and seated in the jury box.)

THE COURT: Proceed, Mr. Levin-Epstein.

MR. LEVIN-EPSTEIN: Thank you, your Honor.

May it please the Court, Mr. Todel, ladies and gentlemen. My name is Ethan Levin-Epstein, I'm an Assistant U.S. Attorney to David Trager, who is the United States Attorney for the Eastern District of New York, which encompasses the five counties of Nassau, Suffolk, Queens, Brooklyn and Staten Island. The facts in this case relate to events that transpired in Queens. And the purpose that I have in making these preliminary remarks to you is to briefly give you an overall picture of what the Government will prove to you and show you by the evidence and, as the Court pointed out, what I'm saying now is not evidence, but that the only evidence that you will hear or be able to observe is the testimony that you will hear from the witnesses that are called to testify by both myself and Mr. Podell for the defense, and any physical evidence that we offer and the Court accepts as being probative in value, evidence.

There are a number of different witnesses that may be called in this case. Although it is not a long

case, per se, although it is not a long case, it is not an unimportant case, and the facts briefly that the Government will show to you are as follows:

The case involves as the Court explained briefly the sale of a quantity of cocaine, a narcotic drug. The indictment charges the defendant Orlando Miranda with both possession of this cocaine and its ultimate distribution, its sale to someone else. The facts that the Government will show to this jury are as follows:

That on March 25 of this year, the defendant Orlando Miranda, who is also known by the name Manola, sold to a person who is cooperating with the Government not strictly speaking an employee of the Government, but a civilian who was cooperating with the authorities, approximately five-eighths of a pound of cocaine hydrochloride for about \$10,000 or about a thousand dollars an ounce.

The proof will show that Mr. Miranda was seen selling this cocaine to this person, was overheard selling this cocaine to the person -- of course, by the person who was the purchaser, and that the purchase was accomplished with money that was provided to this person by the United States Government, what's called in the jargon of the various agencies involved, official

advanced funds, \$10,000 worth.

The proof will be that on March 25, 1974 a woman who was known at that time to the defendant as Beba, after having negotiated with the defendant on various occasions at numerous meetings, and after having gained Manola's, Mr. Miranda's, confidence, did purchase this quantity of cocaine from him in an automobile. The drugs were transferred to an attache case and she transferred first six thousand dollars to him and then at a later date there was a balance of \$4,000.

The evidence will show that on the day in question, March 25, Beba cooperated with the agents of the Drug Enforcement Administration, the Department of Justice, went to the headquarters of the Drug Enforcement Administration in Manhattan and was provided with \$6,000, as I said, official advanced funds, which is real money provided for just these kind of purposes, and she was also searched.

The evidence will show that after she was provided with the money and after her person was searched in the office, she was escorted to her vehicle in Manhattan and the vehicle was searched. And then under strict surveillance Beba in her own automobile traveled to the Jaguar Lounge followed by agents of

the Drug Enforcement Administration, under surveil-1 lance, met with the defendant, entered her car with 2 him and then traveled to another location, at which 3 time the actual transaction occurred. The evidence will show then that after Manola, Mr. Miranda left 5 her vehicle, having obtained the \$6,000 that she carried with her at the time, and having placed this quantity of cocaine in her attache case, she then went to a designated spot where she met with the agents who had surveilled her to this location. They again searched her, they again searched the vehicle and that was the end of the transaction as far as the \$6,000 went. The evidence will show that on April 2, a short

period of time thereafter, Beba went back to the agents of the Drug Enforcement Administration, obtained from them a further \$4,000 to finish up the deal and again was searched and again was surveilled back to the Jaguar Lounge where she deposited with the defendant Orlando Miranda the balance of the deal, \$4,000. That's the case. It's brief, it's succinct and you will have no difficulty in following the I close my remarks at this time and let you hear the evidence for yourself. The only final remark that I would have is that the Government asks only one

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thing and that is that you listen to the evidence with an open mind, recognizing what the court instruction will be on the law; though the Court is the final arbiter of what the law is, remember that it's you who are the final determiners of what happened, based upon the evidence.

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THE COURT: Mr. Todel, do you want to say anything?

MR.TODEL: Yes. If it please the Court,

Mr. Levin-Epstein, Mr. Foreman and ladies and gentlemen
of the jury, as I was sitting a while back and watching
you as you were chosen as prospective jurors and
hearing responses to some of the questions of the
prospective jurors -- I want you to understand that
some of them have been let go, it's not because we
felt or at least that I felt the few that I did dismiss
or did not want them to serve, that they couldn't be
good jurors. I felt a sense of wanting a group of
people.

As I look at you here and as I looked at you when you were sworn in to sit here in judgment of this defendant, free of any prejudice, just listen to the facts as Mr. Levin-Epstein has just stated, because this is going to be a simple case but a very interesting case.

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14a •

One of the problems that I've always seen, always face with a defendant when they are faced with a charge which is brought against them by the United States of America -- that's an awesome type of plaintiff type of situation to put a defendant in.

As you have already heard, it's \$6,000 and \$4,00 that was given to some woman, a cooperating witness, as the Government has stated; a cooperating witness as the testimony will be brought out -- pled guilty, had been arrested in January of this year and then started

MR. LEVIN-EPSTEIN: I'll object to the statement.

THE COURT: Well, the defense case can come on cross-examination of Government witnesses, too; so I think an outline of what the defendant expects to prove is permissible with the understanding, I mentioned before, if the facts come out differently the jury is to decide on the basis of the facts from the witness stand.

MR. TODEL: I want you to play close attention to this case because already you heard of the cooperating witness. The defense will prove that this cooperating witness had been arrested in January of this year, and started to cooperate and then pled guilty on a narcotic charge, so I think you have to

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put it in perspective as the evidence comes in on this case.

You will also hear in this case that this defendant has never been convicted of any crime, that he runs a bar. You have heard where it's located, 114th Street and Roosevelt Avenue, for the past two years. This will be the testimony in this case. The testimony in this case is that this man came from Cuba, has lived here for about 12, 14 years and worked as a longshoreman, stevedore, here in the City of New York, and two years ago was able to accumulate a sufficient amount of money to open up this small bar which is located on 114th Street and Roosevelt Avenue.

As the Court has stated, you have to check the credibility of all the witnesses, whether cooperating witnesses, and also the witnesses presented, Government witnesses who are employed by the Government. I think after you really evaluate the testimony and the lack of testimony, the lack of evidence in this case, I believe after you have heard the Judge's charge as to what is a reasonable doubt; after hearing the facts in this case and the Judge's charge, you will find that the Government has failed to prove the guilt of this defendant beyond a reasonable doubt. Thank you.

THE COURT: Mr. Levin-Epstein, you may call your

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1	first	witness.
2		MR. LEVIN-EPSTEIN: The witness is on her way
3	up.	
4	GLORIA	R O D A S , having been first duly sworn, was
5	examine	ed and testified as follows:
6	DIRECT EXAMINA	ATION
7	BY MR. LEVIN-E	EPSTEIN:
8	Q	Will you state your full name for the jury,
9	ma'am?	
10	A	Gloria Rodas.
11	Q	Are you known by any other name?
12	A	Yes.
13	Q	What other name?
14	A	Gloria Jackson.
15	Q	Are you known by any other name?
16	A	Beba.
17	Q	Spell that.
18	A	B-e-b-a.
19	Q	Mrs. Rodas, have you ever been convicted of a
20	crime?	
21	A	Yes.
22	Q	What crime is that?
23	A	Conspiracy.
24	Q	Were you convicted of that crime of conspiracy
25	following a tr	ial?
THE RESERVE OF THE PARTY OF THE		

1					Rod	as-dir	ect				1	.0a
2		A		No.								
3		Q		Can you	expl	ain to	the	jury	how	you	were	con-
4	victed	of	this	crime?								
5		A		I plead	ed gu	ilty.						
6				(Contin	ued o	n next	page	e.)				
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1	Rodas-direct 12	
2	person you know as by Manola Orlando Miranda?	
3	A Yes.	
4	Q Point him out to the jury.	
5	A Sitting over there (pointing).	
6	MR. LEVIN-EPSTEIN: May the record indicat	e the
7	witness is pointing to the defendant.	
8	THE COURT: Yes.	
9	Q Mrs. Rodas, after your arrest on the indic	tment
10	to which you testified you entered a plea of guilty, did	there
11	come a time when you agreed to cooperate with the author	ities?
12	A Yes, sir.	
13	Q And in return for your cooperation were an	у
14	promises made to you?	
15	A Yes.	
16	Q Can you tell the jury what promise was made	le to
17	you?	
18	A The Assistant District Attorney said that would make it known to the sentencing judge of my cooper	
19	with the Government.	acton
20	Q And was that cooperation made known to Chi	ef
21	Judge Mishler?	.02
22	A Yes, sir.	
23	Q Prior to the time he imposed sentence?	
24	A Yes.	
25		

1		Rodas-direct 14	
2	Drug Enforceme	ent Administration what agent?	
3	A	Agent Schnackenberg and Mr. MacMullan.	
4	Q	And you say you agreed to go to the Jaguar Lounge	?
5	A	Yes, sir.	
6	Q	Where is that?	
7	Α	114th Street and Roosevelt Avenue in Queens.	
8	Q	As a result of that meeting with agents of the	
9	Drug Enforceme	ent Administration, I am directing your attention	
10	to March 1 of	1974, what did you do?	
11	Λ	I went to the Jaguar Lounge.	
12	Q	Upon arrival at the Jaguar Lounge approximately	
13	what time was	that?	
14	A	In the latter part of the evening, about 10,	
15	10:30.		
16	Q	At night?	
17	Λ	Yes.	
18	Q	Did you meet with anybody there?	
19	A	Well, after being there for a while I made	
20	conversation v	with one of the customers.	
21	δ	Do you recall his name?	
22	A	Yes.	
23	Q	What is his name?	
24	Λ	Jack.	
25	Q	What happened after you met Jack?	

1			Rodas-direct 15
2		A	We conversed and we had a few drinks.
3		Q	And then what happened?
4		A	I asked him
5			MR. TODEL: Objection.
6			THE COURT: Overruled.
7		Q	Go on.
8		A	I asked him to introduce me to the owner of the
9	place.		
10		Q	Did he do anything in response to your request?
11		Α	Yes.
12		Q	What did he do?
13		A	He called Manola over and introduced me to him.
14		Q	Do you see the man that Jack introduced to you
15	in the	courtr	oom today?
16		A	Yes.
17		Q	What man is that?
18		A	Manola.
19		Q	Orlando Miranda, the defendant?
20		A	Yes.
21		Q	After being introduced to the man you met as
22	Manola,	did yo	ou have a conversation with the defendant?
23		Α	Yes, sir.
24		Q	Who else was present?
25		A	Jack.

#### Rodas-direct 16 1 Q What did he say, the defendant, and what did you 2 say? 3 A We just exchanged pleasantries about his place, 4 about his place of business. 5 How long did you stay at the Jaguar Lounge on Q 6 March 1? 7 I believe I stayed until closing time. A 8 About what time was that? Q 9 About three o'clock. A 10 And through the course of time, as you testified, Q 11 10:30 or 11, and 3 o'clock in the morning, what were you doing? 12 We were drinking and conversing. A 13 Who bought the drinks? Q 14 Well, the three of us. I would buy a round and A 15 Jack and Manola. 16 How much money do you think you spent that Q 17 night? 18 A I would say about \$75. 19 I direct your attention, Mrs. Rodas, to March 4, 20 1974; I ask you, did there come a time on that day when you 21 had a meeting with agents of the Drug Enforcement Administra-22 tion? 23 A Yes. 24 Who did you meet with? Q 25

1			Rodas-direct	17						
2	7	A	Mr. MacMullan and Schnackenberg.							
3		5	What happened at that meeting?							
4	A	A	I again agreed to go back to the Jaguar	Lounge.						
5	Q	2	I direct your attention now to March 15	of 1974.						
6	Did you	have o	occasion to meet with the defendant on the	hat day,						
7	Orlando	Orlando Miranda?								
8	A	١	Yes.							
9	Q	2	Where did you meet with him?							
10	A	١.	At the Jaguar Lounge.							
11	Q	?	Approximately what time was that, Mrs. H	Rodas?						
12	A		Latter part of the evening, about 10:30.							
13	Q	•	Who else was present at that time?							
14	A		Customers.							
15	Q		Did there come a time when you had a cor	versation						
16	with the	defer	ndant at that time?							
17	A		Yes.							
18	Q		Was anyone else a party to that conversa	tion?						
19	А		No.							
20	Q		What did you say and what did he say?							
21	A		I brought up the subject of drugs.							
22	Q		And what did he say?							
23	A		He told me people he had known had been	arrested						
24	but that	he ex	spected a friend of his to come out of ja	il.						
25	Q		And what did you say?							

1	Rodas-direct 18
2	A And I told him to let me know because I was
3	interested in making a buy.
4	Q What did he say to that?
5	A He asked me about how much.
6	Q What did you say?
7	A I told him I could use a large package, about
8	a kilo.
9	Q What did he say?
10	A We would talk about it later on.
11	Q I now direct your attention to the evening of
12	March 20, 1974, and I ask you, did you have occasion on that
13	evening to meet with the defendant Orlando Miranda?
14	A Yes.
15	Q Directing your attention, specifically to
16	approximately 11:30 in the evening, where did you go?
17	A Orlando and I had a date, met at the Las Fuentes
18	Espanola, another cocktail lounge.
19	Q Where is that?
20	A In Queens, Junction Boulevard.
21	Q Did you go to Las Fuentes?
22	A Yes.
23	Q Did you meet with the defendant at that time?
24	A No, I didn't see him.
25	Q What happened then?

1		Rodas-direct	19
2	A	He had already been there and he had	left.
3		MR. TODEL: Objection, your Honor.	
4		THE COURT: Yes, strike it out. She	just didn'
5	see hi	m. The jury will disregard the statem	ent.
5	Q	How long did you stay at Las Fuentes?	
7	A	About an hour.	
	Q	Did there come a time when you left L	as Fuentes?
	A	Yes.	
	Q	About what time was that?	
	A	Near one o'clock.	
	Q	In the morning of the 21st?	
	A	Yes, sir.	
	Q	Where did you go from there?	
	A	I went to the Jaguar Lounge.	
	Q	Upon arriving at the Jaguar Lounge can	n you tell
1	the jury about	t what time that was?	
	A	I arrived there about one o'clock.	
	Q	And your arrival at the Jaguar Lounge	, did you
1	have occasion	to meet with the defendant at that tir	ne?
	A	Yes. He came in later on, about 1:30	
	Q	And at 1:30 did you have a conversation	on with
1	the defendant?		
	λ	After a while, yes, we conversed.	
	Q	What did he say and what did you say?	

1	Rodas-direct 20
2	A Well, I brought up again the purchase of the
3	drugs.
4	Q What did he say?
5	A And he told me that he had been in the business
6	for a long time and that it could possibly be arranged.
7	Q What did you say to that?
8	A I told him to let me know so I could have the
9	money.
10	Q As a result of this meeting that you testified
11	to in the late evening hours, early morning hours of March 21
12	did there come a time on March 21st in the
13	Directing your attention to the afternoon of March 22,
14	the next day, did there come a time when you met with agents
15	of the Drug Enforcement Administration?
16	A Yes.
17	Q Who did you meet with?
18	A Agent MacMullan and Schnackenberg.
19	THE COURT: We passed one. We'll take a luncheo
20	recess now and we'll resume about ten minutes after
21	2.
22	MR. LEVIN-EPSTEIN: Very well, your Honor.
23	THE COURT: You can step down.
24	(The witness was excused.)
25	THE COURT: Meanwhile the jury don't talk about

J:SS

### AFTERNOON SESSION

(After luncheon recess.)

THE COURT: Bring in the jury.

(Whereupon jurors are now seated in the jury box.)

MR. LEVIN-EPSTEIN: Sitting at counsel table for the Government is Mr. Schnackenberg of the Drug Enforcement Administration who is the case agent in the investigation relating to this defendant.

MR. TODEL: If the Court please, I must object to his sitting here at counsel table. He's an important witness in this case. He's the prime contact of the Government's with this particular witness, and I respectfully object his sitting here during her testimony. I have no objection to his sitting in the Courtroom after this witness testifies, however, during the course of her testimony I must strenuously object.

THE COURT: Normally I grant requests to keep witnesses out of the Courtroom, although I think it's unnecessary reflection on the integrity of the witness, but a case agent I permit to stay. I'll not your objection on the record and I'll let Mr. Schnackenberg stay.

(Continued next page.)

1	G L O R I A R O D A S , having previously been duly sworn
2	by the Clerk of the Court, resumes the witness stand
3	and is now seated in the witness box, and testifies
4	further as follows:
5	DIRECT EXAMINATION
6	BY MR. LEVIN-EPSTEIN: (Cont.)
7	Q Mrs. Rodas, prior to the luncheon recess we
8	had taken you up to the point where I was asking you this
9	question. You had testified as to a meeting and conversation
10	with the defendant Mr. Miranda in the early morning hours of
11	March 21st. I ask you now, directing your attention to the
12	afternoon of March 22, did there come a time on that day when
13	you met with Agents of the Drug Enforcement Administration?
14	A Yes.
15	Q Who was present there?
16	A Agent Schnackenberg and Agent MacMullen.
17	Q What happened at that meeting?
18	A I told them of the meeting with Manola and he
19	said that it could be arranged, and that I was to meet him
20	the next night.
21	Q Who said that it could be arranged?
22	A Manola.
23	Q Directing your attention to that very evening
24	March 22, did there come a time when you met with the

defendant Orlando Miranda on that evening?

1		Rodas-direct	24
2	A	Yes.	
3	Q	Where was that?	
4	A	At the JAguar Lounge.	
5	Q	Approximately what time, Mrs. Rodas?	
6	A	About the same time. I always used to	go
7	between 10, 1	0:30.	
8	Q	At that time you met with the defendant?	
9	A	Yes.	
10	Q	Who else was present?	
11	A	A customer.	
12	Q	Did there come a time when you met the d	efendant
13	that you had	a conversation with him?	
14	A	Yes.	
15	Q	What did you say and what did he say on	that
16	evening?		
17	A	Well, I had primarily inquired as to the	
18	whereabouts o	f Jack, who I was supposed to have met th	e
19	previous week	and he told me that Jack had been arrest	ed, that
20	we were not to	o worry because he was cooperating with t	he
21	Nadjari Commi	ssion and it had nothing to do with us.	
22	Q	Was there a conversation on that evening	re-
23	lating to coc	aine?	
24	A	Yes. He told me that he could only let	me have
25	10 and a half	ounces, that's all he could get his hand	s on
ACCOUNTS OF THE PARTY OF			

1 Rodas-direct because his people were arrested. 2 For the 10 and a half ounces that he could 3 provide, did he quote you a price you would have to pay? 4 5 A Yes What was that price? Q 6 \$10,000. A 7 \$10,000 for 10 and a half ounces? Q 8 A Yes sir. 9 Q Did he tell you the price per ounce? 10 A \$1,000 per ounce. 11 Did he account for the extra half ounce of Q 12 cocaine? 13 HE told me that he was giving me an extra 14 ounce as a token of friendship and that he was interested in 15 forming a partnership between him and myself. 16 How much longer did you stay at the Jaguar 17 Lounge after this offer was made to you? 18 Nearly closing time, about 10 minutes before 19 closing time. 20 What did you do from the time Mr. Miranda 21 offered to sell you cocaine until the time you left? 22

We just socialized.

Directing your attention to March 23, in the very early morning hours, about 1:30 a.m., did there come

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1	Rodas-direct 26	
2	a time that you met with agents of the Drug Enforcement	
3	Administration?	
4	A Yes.	
5	Q Did this meeting, directly following your	
6	presence at the Jaguar Lounge as you just testified?	
7	A Yes.	
8	Q Where did you meet with the agents?	
9	A On JunctionBoulevard and 57th Street in Queens.	
10	Q Who were the agents that you met with?	
11	A Agent MacMullen and Schnackenberg.	
12	Q What happened at that meeting?	
13	A I relayed the conversation between Manola and	
14	myself and told him that the purchase date was supposed to	
15	be for March 25.	
16	Q Mrs. Rodas, I direct your attention to that	
17	date, March 25 of 1974. Directing your attention specifically	
18	to the afternoon of that date, did you have occasion at that	
19	time to meet with agents of the Drug Enforcement Administratio	n?
20	A Yes.	
21	Q Where did you meet with them?	
22	A In their offices.	
23	Q And where is that office?	
24	A On 57th Street in Manhattan.	
	0 What happened at that meeting?	

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		34a
!		Rodas-direct 27
2	A	I was given the sum of \$6,000.
3	Q	By whom?
4	A	By Agent Schnackenberg and MacMullen.
5	Q	And what else happened?
6	A	I was searched and a transmitter was placed
7	on my person.	
8	Q	After you were given the \$6,000, and searched
9	and give this	transmitter, what happened then?
10	A	We left the building and proceeded to my
11	vehicle.	
12	Q	When you say we left the building, tell us whom
13	you are speak	ing of?
14	A	Schnackenberg and MacMullen.
15	Q	Accompanied you?
16	λ	Yes.
17	Q	And you went to your car?
18	A	Yes.
19	Q	What happened when you arrived at your car?
20	. А	They proceeded to search my car.
21	Q	And after having them search the car, what
22	happened then	
23	A	Then I got into my car and they got into theirs.
24	Q	Then what happened?
25	A	We proceeded to the Jaguar Lounge.

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I went inside and he was waiting for me, and he

told me that he wanted me to drive him to an auto body shop

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So I asked him could he cut the package I'll take \$6,000 worth and take the rest the following week. He said there was no time to do that but he would let me have the full amount for the \$6,000 and we agreed for the rest

Then what happened?

Then he opened up the package and he told me if I wanted to taste it. I told him, "No." I didn't have to taste it if he's going to trust me for \$4,000 I would trust him. that it's pure as he said it was. Then I told him to reach back behind me and take the attache case I had in the seat directly behind me and put it in there, which he did.

Had this attache case been in the car when you left DEA headquarters?

> A Yes.

Was it searched?

Yes.

After Mr. Miranda reached behind you for the attache case, what happened then?

He put the package inside the attache case and returned it back and then I gave him the money.

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A The \$6,000 that the agent had given me.  During the course of this drive, when you say you were conversing with the defendant in what language were
Q During the course of this drive, when you say
you were conversing with the defendant in what language were
The state of the s
you speaking?
A In Spanish.
Q Are you fluent in the Spanish language?
A Yes.
Q After having this conversation and again during
the course of this drive down Roosevelt Avenue, did there
come a time when you arrived at your destination?
A Yes sir.
Q What was that destination?
A The V & J Auto Body Shop.
Q What happened when you arrived at the Auto
Body Shop?
A Well, Manola got out of my car and told me
to wait a few minutes. He went into the auto shop, talked
to the man there, then he came back and told me that his
car was ready and I was to follow him.
Q Follow him where?
A To the Jaguar Lounge.
Q And what did you tell him?
A I told him that I was going to go someplace to

After they left you, where did you go? Q

bit of the cocaine that was there, then they left.

car, and Agent MacMullen made some sort of a test, a little

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1	Rodas-direct 33
2	A I went back to the Jaguar Lounge.
3	Q Did you ever actually handle the cocaine?
4	A No.
5	Q Mrs. Rodas, I direct your attention now to
6	April 2nd, 1974, and I ask you on that date, did you have
7	occasion to meet with agents of the DEA?
8	A Yes.
9	Q What agents did you meet that day?
10	A Agent Schnackenberg and Agent MacMullen.
11	Q Where did you meet them?
12	A In the offices.
13	Q At the DEA office?
14	A Yes.
15	Q What happened on that day?
16	A I was given the balance of the money owed,
17	\$4,000.
18	Q What else happened?
19	A I was searched and wired again.
20	Q After having been provided with the \$4,000 and
21	being searched and wired as you put it, did you have occasion
22	to leave the DEA offices?
23	A Yes. I left with Agent Schnackenberg and
24	Agent Costello, the three of us left the building and
25	I went to my vehicle.

1		Rodas-direct 34
2	Q	When you arrived at your vehicle what happened
3	there?	
4	A	They searched me.
5	Q	Did there come a time when you entered your
6	own vehicle?	
7	A	Yes.
8	Q	Did you drive away from the offices at that
9	time?	
10	A	Yes.
11	Q	Where did you drive?
12	A	To the Jaguar Lounge.
13	Q	Do you know where Agent Schnackenberg and
14	Costello were	at that time?
15	A	In the vehicle directly behind.
16	Q	When you arrived at the Jaguar Lounge
17		What time did you arrive at the Jaguar Lounge?
18	A	A little after 4 o'clock.
19	Q	In the afternoon?
20	A	Yes.
21	Q	When you arrived at the Jaguar Lounge, did you
22	have occasion	to meet with the defendant?
23	Α	Yes, he was emerging from his place of business
24	as I was going	
25	Q	When you arrived, did he go back inside?

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Yes.

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23 24

Well, I asked him when we could do further and he told me that he would have to take it slow business

Will you describe what you said and what he said?

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A One was --

MR. TODEL: If the Court please, may we approach

And what were their names?

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THE COURT: We'll take a short recess now.

Take the jury back to the jury room and I'll hear you,

and don't talk about the case.

the bench.

(Whereupon a short recess was had.)

(The discussion outside the hearing of the jury.)

MR. TODEL: Mr. Levin-Epstein is now going into a period of time which is not within the area of the indictment. If the defendant has been indicted according to Count 1 and 2 that on or about the 25th day of March, 1974 that he did knowingly, intentionally distribute approximately a certain amount of cocaine, and that's the first count; and on Count 2 he did possess on that date a certain amount of cocaine. I haven't objected to Mr. Levin-Epstein going into April == about April 2nd since it does relate in some fashion to March 25th, the transaction if it did take place. However, he's going into a period of time after the transaction which has nothing to do with that transaction. I respectfully object to any testimony as to what may have occurred on --

THE COURT: Let me hear what your offer of proof is.

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MR. LEVIN-EPSTEIN: The offer of proof consists as follows. Mrs. Rodas testified that on one occasion at least she had a conversation with the defendant relating to his comments to her as to the formation of a partnership. On both that basis and the following basis I believe that the evidence that Mrs. Rodas will testify to at this time will go to the issue of a state of mind, intention to distribute as it's laid out in Count 1 and 2, I believe; and secondly, as to possible -- not similar subsequent acts but it does go to the continuing relationship of the sale between Mrs. Rodas and Miranda as begun from the testimony you have heard earlier. I think in order for the jury to have a complete understanding of the relationship between these two parties and in fact going to her credibility as to the testimony regarding this one sale, I do believe it is pertinent and probative, and although the indictment is drafted in the standard form of on or about the 25th day of March, I don't believe the Government has ever been bound by evidence solely relating to the 25th day of March or any other day.

THE COURT: It doesn't relate to the same transaction. You have to get it in on some other basis

other than the approximate, but Mr. Todel subsequent cases in this circuit say that evidence of other similar transactions is admissible as long as it's not for the purpose of proving bad character, and intent is one of the circumstances.

MR. TODEL: Except that this is an alleged transaction or an alleged conversation which occurred at a time after the transaction which he's being charged with at this time.

MR. LEVIN-EPSTEIN: On the other hand, if your Honor please, if the conversation to be elicited as to April 19 refers or relates to the transaction I do believe it is probative as giving the full picture of that transaction to the jury. I think it's permissible subject to a comment to the jury. The indictment is only for the March 25th transaction and that this is admitted only for such bearing as it may have on his intent at that time, at the time of March 25.

MR. TODEL: At the time of March 25, your Honor THE COURT: All right, very good.

MR. LEVIN-EPSTEIN: Both the Court and Mr.

Todel is aware pursuant to your instructions I have

made an effort to get Mr. Manning, the Drug Enforcement Analyst, contrary to what I was told earlier he

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Rodas

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changed his plans and he's available for testimony here.

THE COURT: Thank you.

(Continued on next page.)

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(Whereupon, the jury entered the Courtroom.)

G L O R I A R O D A S , having previously been duly sworn, testified further as follows:

THE COURT: All right. I have overruled Mr. Todel's objection. And you may ask the question.

MR. LEVIN-EPSTEIN: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. LEVIN-EPSTEIN: (Cont.)

Q Ms. Rodas, I direct your attention to April 19th of 1974 --

THE COURT: Let me just interrupt to tell the jury the charge in the case here is possession and distribution on March 25th, 1974. The defendant is on trial only for one charge. If there is evidence about the conversations he had with the witness after that time it may be considered as bearing on his intention in connection with the March 25th charge. But you can't convict him for anything but that one item.

MR. LEVIN-EPSTEIN: Thank you, your Honor.

BY MR. LEVIN-EPSTEIN:

Q I direct your attention to April 19th, 1974,
Ms. Rodas. I ask you on that day did you have occasion to
meet with the defendant?

		49a	
1		Rodas-direct	41
2	A	Yes.	
3	Q	Where did you meet with him?	
4	A	At the Jaguar Lounge.	
5	Q	Approximately what time was that?	
6	A	About 10:30.	
7	Q	Who else was present at that meeting?	
8	A	I met two gentlemen that day.	
9	Q	What were their names?	
10	Α	Gregorio and Alfred.	
- 11	Q	Do you know their last names?	
12	А	No.	
13	Q	After having met Gregorio and Alfred, d	id you
14	engage with th	e defendant in a conversation?	
15	A	Yes.	
16	Ω	What did he say and what did you say?	
17	A	Well, he told me that he had expected to	go to
18	Puerto Rico th	e following month of May. And I told his	im that
19	I had a brothe	r who was in the business with me living	ng down
20	there, and to	let me know when he was going so that th	ney
21	could meet.		
22	Q	What business was that?	
23	Α	The cocaine business, the drug business.	
24	Q	What did he say after you told him about	your
25	brother?		

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A Yes.

Q Who?

A By Octavio.

Q An agent of the Drug Enforcement Administration?

A The last name is Spanial (phonetic).

Q Spanial?

A Spanial. Yes.

Q On May 8th of 1974, when you went to the Jaguar Lounge, did you have occasion to meet with the defendant Orlando Miranda?

A Yes.

Q Did you have a conversation with him at that time?

A Yes. Octavio and I both had a conversation.

Q Can you tell the jury, please, what the defendant said, what you said, and what Agent Spanial said?

A Well, first of all, I introduced Octavio as my brother to Orlando. And then Octavio thanked Orlando for the favor that he had done to me.

Q What favor was that?

A By giving me the cocaine. Letting me have it for the \$6,000 when I didn't have the full amount at that time. And Orlando said that he would do anything for me.

And then they proceeded to converse.

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## Rodas-direct

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Q What did the defendant say?

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A Well, after exchanging pleasantries about

Puerto Rico and so on and so forth, Octavio asked Orlando if
he could supply him with a kilo.

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Q What did the defendant say?

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A And he told him that he was going to get out of the business. He was tired of fishing and the change of laws were too strict. So he wasn't going to bother with it any more.

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Ms. Rodas, other than the \$10,000 that you testified that you received from the agents of the Drug Enforcement Administration for purposes of making this purchase, have you ever received any other money from DEA agents?

13

A Yes.

15

Q Approximately how much money have you received?

16

A Between 7 and \$800.

18

Q For what purpose?

19

A For the expenses incurred in the bar.

20

Q What expenses were these?

21

A Well, buying the people drinks, as I was supposed to be a big buyer in the drug business. I was supposed to be playing the part of a big spender.

23

Q Prior to your meeting the defendant Miranda on the date that you testified you first met him, had you ever met

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1		Rodas-direct 45
2	him before?	
3	Λ	No.
4	Ď	Other than the business dealings that you
5	testified abo	out, have you ever done business with him before?
6	A	No.
7	Q	Other than the socializing that you did with him
8	at the bar th	at you testified to, have you ever socialized with
9	him?	
10	Α	Yes, I have.
11	Ω	Where else?
12	Α	We once had occasion to go to another cocktail
13	lounge.	
14	Q	Other than during the course of this investiga-
15	tion, had you	ever socialized with the defendant Orlando
16	Miranda?	
17	Λ	No.
18	Ω	Did you ever borrow any money from him?
19	Α	No.
20	Q	Did you ever loan any money to him?
21	Λ	No.
22	Q	Do you know any members of his family?
23	λ	No.
24		MR. LEVIN-EPSTEIN: I have no further questions
25	at this	s time, your Honor.

I worked in different schools.

A.

1		Rodas-cross 47	7
2	2	Where? In the City of New York?	
3	А	In the City of NewYork, yes.	
4	Q	You worked in Queens or Brooklyn or the Br	conx?
5	. А	I worked in the Bronx, Brooklyn and Manhat	tan.
6	Q	I see. Prior to your working as a parapro	fessional
7	for the Board	of Education, what type of work did you do	?
8	A	Prior to that I worked in a bar business.	
9	Q	Pardon?	
10	A	In the bar business.	
11	Q	Bar business?	
12	А	Yes.	
13	Q WI	here had you worked in the bar business?	-
14	Α	In Brooklyn.	
15	Q	I see. When had you when did you first	
16	start working	for the Board of Education?	
17	λ	The year of '73.	
18	Q	What part of the year of '73?	
19	А	About June, '73.	
20	Q	June of '73?	
21	Α	Yes.	
22	Q	When did you stop working for the Board of	
23	Education?		
24	A	July.	
	Q	Of '73?	
25			

1		Rodas-cross	48
2	A	Of '74.	
3	Q	July of '74?	
4	A	Yes.	
5	Q	And you were working for the Board of I	Education
6	after you ha	d been arrested in January of '74?	
7	A	Yes.	
8	Ω	And when did you plead guilty in that o	ase in
9	which you we	re arrested?	
10	Α	In February.	
11	Q	February. And you continued working fo	r the
12	Board of Educ	cation thereafter?	
13	A	Yes.	
14	Q	And at the present time you are not emp	loyed;
15	is that corre	ect?	
16	A	No.	
17	Q	Are you receiving any assistance at all	from
18	the New York	City Department of Welfare?	
19	Α	"No.	
20	Q	Are you receiving any assistance from the	ne
21	United States	Marshal?	
22	λ	No.	
23	Q	How do you support yourself at the prese	ent time?
24	A	My brother is helping me out.	
25	Q	I see. Who is your brother?	

1		57a Rodas-cross
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3		MR. LEVIN-EPSTEIN: Objection, your Honor.
		THE COURT: Sustained.
4	Q	You stated that you started working for the
5	Board of Educ	eation in June of '73. Prior to June of '73,
6	where had you	been working?
7	A	I had been working in the bar business.
8	<u>Q</u>	Where?
9	A	In Brooklyn.
10	Q	What type of work did you do in the bar?
11	A	I managed the bar.
12	Q	I see. How long did you manage the bar?
13	A	14 years
14	Q	14 years?
15	A	Yes.
16	Q	In Brooklyn?
17	A	In Brooklyn.
18	Q	Do you know a man by the name of Carlos
19	Martinez?	
20	A	Yes. I met him once.
21	Q	Once?
22	A	Yes.
23	Q	Do you know a man by the name of Saul Fontanez?
24	A	No.
25	Q	When you were indicted in January of this year

conspiracy also that you knowingly and intentionally and

1 Rodas-cross unlawfully possessed with the intent to distribute large 2 quantities of cocaine? You pleaded guilty to that? 3 Yes. 4 And you also pleaded guilty to -- also as part 5 of this conspiracy, that you concealed the existence of the 6 conspiracy and would also take steps designed to prevent the 7 disclosure of these activities? You also pleaded guilty to 8 that as part of that conspiracy count? 9 I believe, sir, I pleaded guilty to the whole --A You didn't receive any jail sentence at all? A No sir. You know that Mr. Carlos Martinez received a jail sentence of 12 years? A Yes. And you know that Mr. Saul Fontanez received a Q jail sentence of 7 years? I don't know the person, Saul Fontanez. A 0 Did you see Michael Torre? Yes. You know he received a sentence of 2 years? Q

> A Yes.

You know that Ellen Reiner received a sentence or 1 year?

> A Yes.

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1	Rodas-cross 53
2	Q And you know that Iris Kinovas (phonetic) re-
3	ceived a sentence of 1 year?
4	A I don't know that.
5	Q Do you know Raffaelo Algarin?
6	A Yes.
7	Q She received a sentence of 1 year?
8	A Yes.
9	Q And you didn't receive any jail term at all?
10	A No sir.
11	Q Now, Mrs. Rodas, during the whole course of
2	your direct examination, you stated that you had gone to the
3	Jaguar Restaurant on a number of occasions; is that correct?
4	A Yes.
5	Q Did you go there alone?
6	A No.
7	Q With whom did you go?
8	A On many occasions the agents were with me or
9	they were driving.
0	Q Pardon?
1	A They would be driving in back of me.
2	Q I see. I know that the agents may have been
3	driving in back of you. But when you went in the bar, the
4	Jaguar Lounge, were you alone when you went there?
	A Sometimes I would meet friends there.

	64a
JB:GA 1 T2R2 PM	Rodas - cross/Todel 55
2	Q Is there a woman sitting next to you?
3	A Yes.
4	Q Can you identify that woman?
5	A Well, I can't see her face, but I believe that's
6	my friend Georgie.
7	Q Georgie?
8	A Yes.
9	Q What is her last name?
10	A Rivera.
11	MR. LEVIN-EPSTEIN: May we approach the side bar
12	your Honor?
13	THE COURT: Yes.
14	(The following took place at side bar.)
15	THE COURT: Let me see the pictures.
16	What is the problem?
17	MR. LEVIN-EPSTEIN: I believe, although I can't
18	be sure, that Mr. Todel is about to elicit the identity
19	of this person here.
20	MR. TODEL: Yes.
21	MR. LEVIN-EPSTEIN: If he is attempting to find
22	out the identity, let me indicate to the Court at this
23	time that this person is also a Confidential Informant
24	of the Drug Enforcement Administration. And if her
25	identity, her true identity is made known, it will re-

sult, I will represent to the Court, with the same degree of peril as if Miss Rodas' true name were known.

Miss Rodas, of course, is the witness. I can make known this person's true name to Mr. Todel if the Court so directs.

However, to inquire in open court as to this person's true name at this time may have a result of danger to both parties, which I believe goes beyond the scope of proper cross-examination.

THE COURT: Well, I will consider whether that prejudices the defendant. But what is your next question going to be? What do you want to find out?

MR. TODEL: I would want to know her relationship with this witness.

THE COURT: You can ask her the relationship, but don't ask for her name or address in the courtroom.

MR. TODEL: I won't.

MR. LEVIN-EPSTEIN: Thank you.

MR. TODEL: Your Honor, we might as well -- I'm going to show her another picture, also. So if he has any --

MR. LEVIN-EPSTEIN: I understand that this person depicted on the extreme right of the photograph is the same person.

	66a
1	Rodas - cross/Todel
2	THE COURT: I see. All right.
3	MR. LEVIN-EPSTEIN: The same person as in the
4	other photograph. And I would as that the Court's
5	instructions apply to this photograph as well.
6	THE COURT: Yes.
7	(End of side bar.)
8	Q Miss Rodas, what is the name of the person that
9	you stated
10	A Georgie.
11	MR. LEVIN-EPSTEIN: Objection.
12	THE COURT: Yes.
13	MR. TODEL: I want to get the first part.
14	THE COURT: The objection is overruled.
15	Q Now, Georgie, is she a friend of yours?
16	A Yes.
17	Ω Is she also a Does she work for the Government,
18	too?
19	MR. LEVIN-EPSTEIN: Objection.
20	THE COURT: I think he's entitled to ask that.
21	THE WITNESS: I don't understand what you mean
22	by working for the Government. She accompanied me to
23	the Jaguar Lounge many times. She would meet me there.

Take a cab and meet me in front of the Jaguar Lounge.

I see. Was she employed by the Government?

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as Georgie is one Iris Maldonado. However, the Govern-

ment does not intend to call her as a witness in this

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case. And with the same representation I made to you early, of course, still holds true. If the name in this indictment, which, of course, is a public record, is connected to this person, I feel that this -- the same danger will be present as if Mr. Todel announced

in the courtroom who the person is.

MR. TODEL: Well, you know, I have just received this today. And in just checking the docket, the records, I believe Iris Maldonado -- I am not sure whether she also received a suspended sentence.

MR. LEVIN-EPSTEIN: Ask her whether she -- You already established her name. Ask her if she received a suspended sentence. But I will ask that you not ask her the name.

THE COURT: Yes, I think that is all right.

MR. LEVIN-EPSTEIN: All right.

(End of side bar.)

Q Miss Rodas, the woman whom you identified as Georgie, she was indicted in the same case with you; is that correct?

A Yes.

And she was also indicted with you for knowingly importing into the United States approximately ten pounds of cocaine on August the 5th, 1973; is that correct?

THE WITNESS: No, she was not under the employ-

ment -- neither was I -- as an Informer with the Govern-

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	72a
1	Rodas - cross/Todel 63
LeG:GA 2 T3 PM	Q You don't know her last name?
3	A No.
4	Q When you went to the Jaguar restaurant, did you
5	go the the Jaguar restaurant with Toni?
6	A No, Toni always met me there. She was always
7	inside.
8	Q Had you met Toni the first time in the Jaguar
9	restaurant?
10	A No.
11	Q Where had you known Toni before?
12	A From where she worked.
13	Q And where did she work?
14	A She worked in the restaurant.
15	Q What restaurant?
16	A I'm sorry, I can't answer that.
17	MR. LEVIN-EPSTEIN: May we approach the side bar,
18	your Honor?
19	THE COURT: All right.
20	(Whereupon a side bar conference was had.)
21	MR. LEVIN-EPSTEIN: Your Honor, I assume Mr. Todel
. 22	is now placing the witness is a position of giving up
23	information about the identity of a very close friend
24	of hers who, I think, will be under the same perils.

She is a close friend of the witness, I'm told. Now,

whether or not a threat is imposed upon the witness directly, or one close to her, accomplishes the same purpose. The question is -- But if it has the design to intimidate the witness, I would ask that the question be not pertinent to the cross-examination of the witness.

MR. TODEL: This defendant is facing fifteen
years as I stated to the Court, there are certain peculiarities about this case, and I feel that cross-examination -- these are proper questions.

THE COURT: Well, the question now is, What restaurant she worked at.

MR. LEVIN-EPSTEIN: She will not answer. I will ask the Court to recognize her concern for the safety of this person. I wonder if the Court is as interested as I am about these peculiarities that Mr. Todel keeps mentioning.

MR. TODEL: This is a judgment I am making. I may be wrong. There is something about this case which I feel --

MR. LEVIN-EPSTEIN: With all due respect to Mr. Todel's experience --

THE COURT: She doesn't want to answer. I'll have to consider what effect that has on her testimony. There is so much I can hold out.

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MR. LEVIN-EPSTEIN: The Government didn't intend to hold back anything. The Government does recognize its obligation to persons who cooperate, to protect them, the ones they care about.

THE COURT: To testify, they have to do something, too. I'm not sure how relevant this is.

Go on with some other question, we will get to that in the morning.

### CROSS EXAMINATION

BY MR. TODEL: (continuing)

Q Miss Rodas, I show you Defendant's Exhibit B for identification, and ask you whether or not you can tell the Court and Jury who the gentleman is with the mustache?

A That's the Agent Otavio.

Now, you stated on direct examination that when you were arrested in January -- Do you know what date it was in January that you were arrested?

A On the 24th.

Q And when you were arrested, did you report to Court?

A Yes.

Q And after you were brought to Court, were you released on bail?

No. I was released on my own recognizance.

1		75a
2		Rodas - cross/Todel 66
	*	You were released on your own recognizance?
3	A	Yes.
4	Q	Before you were brought to Court on the day you
5	were arreste	d, were you taken to the Drug Enforcement Bureau?
6	A	Yes.
7	Q	Where is that located?
8	A	On 57th Street in Manhattan.
9	Q	And did you have a conversation with anyone there?
10	A	With the Agents.
11	Q	What Agents did you converse with there?
12	A	Agent Bocchiccio, Schnackenberg, different Agents.
13	Q	And what did they tell you at that time?
14	A	They questioned me.
15	Ω	They questioned you?
16	A	Yes.
17	Q	Did they tell you that, Look, we'll bring you to
18	court, you'll	be able to go home as long as you do some work
19	for the Govern	nment?
20	A	No.
21		MR. LEVIN-EPSTEIN: I object as to form.
22		THE COURT: Overruled.
23	Q	They didn't say that to you?
24	A	No.
25	Q	What did they ask you to do, if anything?

		76a	
1		Rodas - cross/Todel	67
2	A	They didn't ask me to do anything.	
3	Q	They just brought you to court, and no	bail was
4	set on you.	You went home on your own recognizance?	
5	A	Yes.	
6	Q	And did you have any conversation with	any of
7	the Agents af	ter January 2 th with reference to your	cooperat-
8	ing with them	?	
9	. A	Yes.	
10	Q	And when was that?	
11	. А	February.	
12	Q	And that was the first time you had any	conversa-
13	tion with the	Agents with reference to cooperation?	
14	A	The day that I was released in my own re	ecogni zance
15	we spoke down	stairs, but we spoke solely of the people	that I
16	had met durin	g the course of this Conspiracy. Then as	ter that
17	is when we ta	lked about the Jaguar Lounge.	
18	Q	Now, on the day that you were arrested,	you did
19	cooperate with	the Police with reference to the people	who were
20	also arrested	with you; is that correct?	
21	A	No, that is not correct.	
22	Q	Pardon me?	
23	A	That is not correct.	
24	, Q	Will you tell us what the Agents said to	you,
5	and what you	said to them on the day you were arrested	; that

'	Rodas - cross/Todel 68	
2	you were able to get out on your own recognizance, and with	
3	no bail?	
4	A They questioned me is I had bought this cocain	ne
5	and I denied that I had full knowledge of what I was bringing	uá
6	in. I was taking money down there.	
7	Q Did they say anything at all at that time that	Ł.
8	you would be able to be released without naving to put up ar	У
9	bail?	
10	A No.	
11	Q Did they question you thereafter, January 24th	1,
12	on your cooperating with the Government?	
13	A After, yes.	
14	Q When was that?	
15	A In February.	
16	Q When, in February?	
17	A On the 28th of February.	
18	Q Was that the first time?	
19	A The first time; yes.	
20	Q And what did the Agents say to you, and what d	id
21	you say to them?	
22	A They asked me if I was willing to go to the	
23	Jaguar Lounge and try and meet people who were involved in the	he
24	importation of cocaine.	

Q And with whom had you spoken with at the Drug

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1		78a
		Rodas - cross/Todel 69
2	Enforcement	Bureau?
3	A	Agent Bocchiccio.
4	Q	Is that the Agent who has a mustache in this
5	picture?	
6	A	No.
7	Q .	Did you speak to any other Agent?
8	A	I spoke to Agent Schnackenberg.
9	Q	Any other Agent?
10	A	Yes.
11	Q	Who else?
12	A	Bill Manning. There were a few others present,
13	but I dont k	
14	Q	Did they say what they would do for you if you
15	were to coop	erate with them?
16	A	No.
17	Q	They didn't say anything at all?
18	A	No.
19	Q	And you, just on your own, decided to cooperate;
20	is that corre	있는데 보통하다 하는데 보통하다 하는데 보통하다 하는데 보통하다 보통하다 보통하다 보통하다 보통하다 하는데 보통하다 보통하다 보통하다 보통하다 보통하다 보통하다 보통하다 보통하다
21	A	Yes.
22	Q	When for the first time did you go to the Jaguar
23	Bar?	
24	A	On February 28th.

Did you go there alone?

Q

1		Rodas - cross/Todel 71
2	Q	Did you receive any money from the Government at
3	that time?	
4	A	Yes, for the expense at the bar; yes.
5	Q	How much money did you receive?
6	À	About \$75.
7	Q	You signed a receipt for the \$75?
8	A	Yes, sir.
9	Q	That was on February 28th?
10	A	No, on March 1st I received that.
11	Q	Pardon me?
12	A	March 1st.
13	Q	In other words, then, on the first day that you
14	went there y	ou hadn't received any money?
15	A	No, I wasn't given money the first time I went
16	there.	
17	Q	What time did you get to the bar the first time?
18	A	About 9:30, 10:00 o'clock.
19	Q	How long did you stay at the bar?
20	A	Only a few hours.
21	Q	Did you buy any drinks there?
22	A	No, not for anybody; for myself and Georgie; yes.
23	Q	You say that date the Government hadn't given
24	you any money	7
25	A	No.

	Rodas - cross/Todel 72
Q	Do you know if Georgie received any money from
the Governmen	t?
A	No, she did not.
Q	You had money of your own at the time?
A	Yes.
Q	On March 1 you stated that you received money
from the Gove	rnment?
A +	Yes.
	MR. TODEL: If the Court please, may I speak
with -	
Q	On March 1st, who gave you money to go to the
bar?	
A	I'm not too sure. I don't know whether it was
Agent Schnacke	enberg or Mr. Manning.
Q	Did you meet the defendant for the first time
on March 1st?	Did you have a conversation with him?
A	Yes, that's when I was introduced to him.
Q	Did you have any conversation with him on March
17	
Α .	Just the exchange of pleasantries.
Q	And on March 1, 1974, did you go there alone?
A 1	No.
Q	With whom did you go on March 1?
Α 1	With Georgie, and I met Toni there.
	the Government A Q A Q from the Govern A with Q bar? A Agent Schnacke Q on March 1st? A Q 1? A Q A

1		Rodas - cross/Todel 73
2	Q	And about what time did you get there on that
3	day?	
4	A	About 10:00, 10:30.
5	Q	How long did you stay there?
6	A	I stayed towards closing time.
7	Q	And when for the next time did you see Mr. Manola?
8	A	I saw him the following week.
9	Q	Where did you see him?
10	A	At the Jaguar Lounge.
11	Q	Did you have a conversation with him at that
12	time?	
13	A	Just the exchange of hello, that's all.
14	Q	And on March 4th, with whom did you go to the
15	bar?	
16	A	With Georgie.
17	Q	Was Toni there?
18	А	Toni was there.
19	Q	Did you have any conversation with the defendant
20	at that time?	
21	A	No, just the exchange of pleasantries, but no
22	conversations	, no deep conversation. We were just getting to
23	know each oth	er.
24	Q	And on March 4th, had you received any money
25	from the Gove	rnment?

•	83a
1	Rodas - cross/Todel 74
2	A Yes.
3	Q How much did you receive from the Government at
4	that time?
5	A I received from a 100 to a 150 for the weekend
6	because then they were giving me money for the three days. I
7	was going the three days, Friday, Saturday and Sunday.
8	Q Now, when for the next time did you see the
9	defendant?
10	A I saw him on the 15th.
11	Q 15th of March?
12	A March.
13	Q And did you go to the bar with anyone?
14	A With Georgie.
15	Q And was Toni with you at that time?
16	A She was there.
17	Q You always met Toni in the bar?
18	A Yes.
19	Q How long did you stay in the bar at that time?
20	A I nearly always stayed towards closing time.
21	THE COURT: Mr. Todel, if we ran another five
22	or ten minutes, would you finish?
23	MR. TODEL: No.
24	THE COURT: I thought about sitting a little
25	later. There are few other things. Well adjourn, and

we'll resume tomorrow morning. And report downstairs. Then go over to the jury room in the next courtroom, where you were, and we may have this one available.

We'll see, and I'll call you in when we are ready to start.

Don't talk about the case amongst yourselves, or anyone else, and don't talk about the case with anyone in the court you may see.

Good night.

(Whereupon, Court adjourned for the day.)

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		85a				
1		I N D E	x			76
2	Witness	Direct	Cross			
3	Gloria Rodas	10	46	9.		
4	Exhibits			The same		
5	Government's				For Id.	In Evid.
6	None					
7	Defendant's					
8	A	Photograph			54	
9	В	Photograph			54	
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## Appearances:

3.

DAVID G. TRAGER, ESO.
United States Attorney
for the Eastern District of New York

BY: E. LEVIN-EPSTEIN, ESO.
Assistant U.S. Attorney

MORTIMER TODEL, ESO.
Attorney for Defendant

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MR. TODEL: Before the jury is called in, I would like to make application to the Court with reference to the testimony of Agent Pinol who testified on Wednesday afternoon. I respectfully move to have his testimony stricken from the record as well as the testimony of Mrs. Rodas who had testified.

Although I had objected to her testimony with reference to any time after April 4th, I feel from the testimony of Agent Pinol -- if ever there was a situation where there was an inference on an inference it would be the testimony of Agent Pinol.

THE COURT: An inference upon an inference is perfectly proper.

MR. TODEL: It is almost three-way, an inference upon an inference upon an inference. His testimony was that he thanked Mr. Miranda for a favor. He did not mention what the favor was. He also testified to the effect that the only -- what he knew is only what Mrs. Rodas told and I feel that the testimony that was brought in was highly prejudicial to the defendant and I do not think it has any bearing with reference to what did occur or what did occur on March 25th or April the 2nd.

MR. LEVIN-EPSTEIN: I would merely recall the arguments raised as to the subject prior when the issue

of a convers. In was brought out during Mrs. Rodas' testimony as it related to Agent Pinol's presence along with Mr. Miranda and the conversation she testified to and it was corroborated by Agent Pinol.

Although it does not speak directly to the events as having transpired on that day, it certainly lends the surrounding factual pattern so the jury may properly consider information that is in evidence for the purpose of determining whether the element of intent has been laid before them. We'd merely offer that again as the same point.

THE COURT: I think you can argue to the jury that the thanks is not definitely related to any criminal act and therefore it does not constitute probative evidence. I think the jury can consider whether there is any other favor involved and I am going to deny your motion.

Let us bring in the jury row. Who is your next witness? Is he here?

MR. LEVIN-EPSTEIN: Yes, he is.

(The jury entered the courtroom.)

THE COURT: Good morning. We are ready to proceed.

Mr. Levin-Epstein, your next witness.

MR. LEVIN-EPSTEIN: Good morning. The Government

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calls James Castillo, your Honor.

JAMES CASTILLO, having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

> THE CLERK: State your full name and spell it, please.

> > THE WITNESS: James Castillo, C-a-s-t-i-l-l-o.

THE COURT: You may proceed.

MR. TODEL: May I approach the bench at a sidebar?

THE COURT: All right.

(Sidebar discussion.)

MR. TODEL: I have not received any 3500 material with reference to this particular witness, although the Court did direct the United States Attorney to turn over 3500 material last week. In addition to which, your Honor, from the testimony which took place last week I realize that probably Mr. Castillo may be called. However, if he is going to testify with reference to anything which may have occurred on March 25th which he stated that he had heard over a radio transmitter, I would most respectfully move to suppress that testimony on the grounds from the testimony of the Government witnesses a tape was made of that conversation, nowhere has the Government been

able to produce this tape, and the ability to crossexamine this witness with reference to a conversation is completely lost.

THE COURT: What explanation is there for the tape not being available?

MR. LEVIN-EPSTEIN: I tried to explain. The tap was lost. I intend to bring it out by this witness.

Secondly, as far as the 3500 material, there is none by this witness.

THE COURT: Is he mentioned in any of the other reports?

MR. LEVIN-EPSTEIN: He is, which have been turned over.

THE COURT: He is not an FBI agent?

MR. LEVIN-EPSTEIN: He is with DEA.

MR. TODEL: Nowhere in the report is there any statement by Mr. Castillo as to what transpired in this automobile on March 25th -- absolutely nothing in there.

MR. LEVIN-EPSTEIN: That's correct.

THE COURT: That bears on the credibility, I suppose.

MR. LEVIN-EPSTEIN: I suppose so.

MR. TODEL: I respectfully move in view of the

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fact that there is no 3500 material from this particular agent, and that there is no tape although there was a tape, I move that his testimony be suppressed with reference to that conversation.

THE COURT: We will wait and hear what the testimony is with respect to the loss of the tape.

Section 3500 does not require that there be statements made by agents. It merely requires that any statements be turned over.

(In open court.)

MR. LEVIN-EPSTEIN: May it please the Court?

THE COURT: Proceed.

MR. LEVIN-EPSTEIN: Thank you.

### DIRECT EXAMINATION

## BY MR. LEVIN-EPSTEIN:

- Q Would you state your full name for the jury.
- A James Castillo.
- Q What is your occupation, Mr. Castillo?
- A I am a special agent with the Drug Enforcement Administration.
  - Q How long have you been so employed?
  - A Approximately 13 months.
  - Q Prior to that time were you employed by the

#### Government?

For about the same period of time.

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Narcotics laws?

Yes, it was.

Did you travel in the Government vehicle as part

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94a Castillo-direct 202a of the surveillance? Yes, we did. A What were you surveiling? Q Miss Rodas. A (Continued on next page.) 

	95a
uS/rp 1	l Castillo - direct 203
2	DIRECT EXAMINATION
3	BY MR. LEWIS-EPSTEIN (Cont'd):
4	The witness who testified here last week.
5	A Yes.
6	Q Where was he when you were surveilling her?
7	A In another vehicle.
8	Q Where was your vehicle in respect of herself?
9	A We were behind her.
10	Q As she was travelling?
11	A Correct.
12	Q At what point did you begin the surveillance
13	of Mrs. Rodas's vehicle?
14	A We began the surveillance at the 57th Street
. 15	office in Manhattan.
16	Q From leaving the 57th Street office of DEA,
17	where did you follow Mrs. Rodas's vehicle to?
18	A We followed her to the Jaguar Lounge in Queens.
19	Q Did there come a time when she arrived at the
20	Jaguar Lounge?
21	A Yes, sir.
22	Q During the course of this travelling with you
23	in the Government vehicle and Mrs. Rodas in her vehicle under
24	surveillance, were you in radio contact at least in terms of
25	reception to Mrs. Rodas's vehicle?

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24 25 and they drove to the B & J Auto Repair Shop.

During the period of time, Agent Castillo, between the moment that Mrs. Roadas and Mr. Miranda in her vehicle left the Jaguar Lounge and arrived at the B & J Body Shop, did you overhear conversation between them over the Kel transmitting device?

A Yes.

Q In what language were they --

A In Spanish.

Q Are you conversant in the Spanish language?

A Yes.

Q Do you speak it fluently?

A Yes.

Q Did you overhear the conversation in the Spanish language?

A Yes, I did.

Q Can you tell the Jury and the Court what happened and what you overheard on that transmission?

MR. TODEL: If the Court pleases --

THE COURT: Mr. Todel made an objection at the side-bar and I think you should bring out the question whether it was taped and what happened to the tape.

During the course of your receiving these transmissions in the Government vehicle, was there a tape recorder

1	1	
•	4 Castillo - di	rect
2	operating in your vehicle?	
3	A Yes.	
4	Q Was a tape recording	g made of these transmissions?
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6	Q Was this tape record	ing maintained as part of
7		
8	A Yes.	
9	Q Do you know what has	happened to that tape re-
10		The same of the same same same same same same same sam
11	A Yes.	
12	Q Can you tell the Jur	y what happened to it?
13		s returned to the 57th Street
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16		of it when I heard it for
17	and an and an	
18	I was asked to get so	omething for another case
	and we had going that highe and st	absequently the tape has
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20	and the state of t	: is?
21	A That's correct.	
22	2   Q Have you made a searc	ch for the tape?
23	A I have.	
24	Q Have other agents in	your presence made a search
25	for this tape?	

# Castillo - direct

A Yes.

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Have these searches been made pursuant to directives by yourself and your superiors?

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A Yes.

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What has been the result of these searches?

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No one has found the tape. It was lost. A

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But you were present in the car while this tape recording was being made?

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A Correct.

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Q You did overhear everything that went on to that tape; is that correct?

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Correct.

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I ask you again, can you tell the Jury and the Court what was said during the course of this transmission between the defendant Orlando Miranda and the witness Gloria

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Rodas --

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objection.

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THE COURT: Well, I think the law on this matter is if the tape was deliberately destroyed, the witness should not be permitted to testify about it. If the tape has been lost through the negligence of the Government and I suppose there is negligence if a pieceof evidence has disappeared, the conversation

MR. TODEL: If the Court pleases, I renew my

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## Castillo - direct

may be the subject of testimony by somebody who heard it, but the Jury can consider, in judging Mr. Castillo's credibility, the extent to which the loss of the tape may affect either the question whether there was ever such conversation or the contents of the conversation to the extent that the witness may be accurate or

I will overrule the objection and you have an exception.

MR. TODEL: If the Court pleases, may I, on voir dire, before this witness testifies, question him with reference to the lost tape?

THE COURT: Yes.

inaccurate in saying it.

# VOIR DIRE EXAMINATION

## BY MR. TODEL:

When did you return to the Drug Enforcement Bureau office on March the 25th?

At approximately 6:00 p.m. that night, 5:30, 6:00.

With whom were you when you returned to the Drug Enforcement Bureau?

I was with the other surveilling agents that I mentioned before.

That was Agent McM Ulan, Schnakenberg and

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Mr. Dolan?

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As well as a few other agents, if I recall, Special Agent Tully was also present.

What is the procedure when a tape is made by the Drug Enforcement Bureau as to recording that tape to memorandum?

The tapes are usually transcribed by an interpreter and they are on paper.

That was done in this case?

No, sir, it was not.

when the tape is taken off the tape recorder, are there any notations made on the tape?

The notations, sir, are put on prior to the recordings, the date, the time.

And did you or anyone in the Drug Enforcement Bureau make a notation as to the time in any record of the Drug Enforcement Bureau as to when that tape was put on that particular tape recorder --

> MR. LEVIN-EPSTEIN: The question is: Did this witness --

THE COURT: Does he know whether anything was done?

THE WITNESS: I really don't know, sir.

When a tape recorder is removed from a tape (sic) Q

# Castillo - voir dire

is there any record made by the Drug Enforcement Bureau that such a tape recording has been removed from a tape recorder?

A No.

Q Was there ever a record made on March 25, 1974, as to the fact that this tape recorder -- tape recording of this conversation was missing?

A A written statement to that effect?

Yes, a memorandum in the regular course of business.

A I don't know.

Q Who would know?

A I would imagine that the group supervisor would know, Group Supervisor McMullan.

When for the first time were you asked to look for this tape by the U. S. attorney's office?

A The U.S. attorney instructed me to do so approximately two weeks ago.

(Continued on next page.)

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		103a
	1	Castillo-voir dire
hs/nc am3	2	VOIR DIRE EXAMINATION
	3	BY MR. TODEL: (Cont.)
	, 4	Q ANd who was the U. S. Attorney?
	5	A Mr. Levin-Epstein.
	6	Q Was that the first time that you looked for this
	7	tape?
	8	A No, sir, it was not.
	9	Q Was that the first time since March 25, 1974
	10	that you looked for the tape?
	11	A No, sir, it was not.
	12	Q When was the last time prior to two weeks ago
	13	that you looked for this tape?
	14	A I looked for the last week again
	15	THE COURT: Before Mr. Levin-Epstein asked you,
	16	when did you last look?
	17	THE WITNESS: I again looked for the tape last
	18	Wednesday.
	19	THE COURT: Before two weeks, when did you last
	20	look?
	21	THE WITNESS: Oh, I don't recall exactly but at
	22	the time I would say approximately three months ago

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BY MR. TODEL:

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Was there any record made by your group

I don't recall exactly when I looked for it.

212 2 Castillo - voir dire supervisor, if you know, that this tape was missing, yes or no? 2 Written or oral? 3 Written. 4 I do not know. 5 Who took the tape recording off the tape 6 recorder on March 25? A I do not know. 8 Q You didn't take it off, did you? 9 No, sir, I did not. A 10 Was it Agent McMullan, if you know? Q 11 I do not know. 12 Q Was it Agent Schnakenberg? 13 I don't know who took it off the machine. 14 Q Who gave you the tape on March 25th, 1974? 15 It was in the recorder. 16 Was the tape recording removed fromthe tape 17 recorder -- was the tape recording --Obviously so, due to the fact that I saw the 19 tape recording device and the tape was no longer in it, so it

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had to be taken out.

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Q Did Agent Schnakenberg take it out?

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I stated that I do not know.

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MR. LEVIN-EPSTEIN: The question has been asked numerous times.

# Castillo - voir dire

after returning to Group Supervisor McMullan's office, I left and that was the last time that I heard and saw the tape.

MR. TODEL: If the Court pleases, I renew my objection at this time. I think that further witnesses would have to be called before there could be any testimony by this witness, your Honor.

THE COURT: No, I will adhere to my ruling.

I think there could be more witnesses, but that's
a matter of the weight of the evidence.

MR. LEVIN-EPSTEIN: Thank you, your Honor.

THE COURT: They witness may answer.

# DIRECT EXAMINATION

BY MR. LEVIN-EPSTEIN: (Cont.)

THE COURT: Let me ask one question:

You say you heard it for three minutes; was it that night?

THE WITNESS: Immediately when I returned to the office.

THE COURT: I see. Go ahead.

Agent Castillo, before the voir dire by Mr. Todel,
I believe the last question I asked you was this:

Would rou please tell the jury and the Court what -- what, during the course of that tape where you over-heard the conversation, did Mrs. Rodas say and what did the

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Castillo - voir dire

defendant Orlando Miranda say?

The defendant spoke and said that he had the package. The woman said that she didn't have the entire amount of money so she could only take part of the package -- she stated that she had \$6,000.

The defendant said that he couldn't split the package up and that she sould have the complete package and he trusted her for the balance of the amount which they had agreed upon.

He also stated that he would open the pakcage so she could examine it. She said no, she trusted him and asked him to put it in a case that she had in the back seat. That was the -- that was the essence of the conversation.

Did there come a time after this conversation or during this conversation that you had occasion to translate from the Spanish language, out loud, what was being said? Yes, sir.

Did you do this verbatim or did you do it in substance, what was being said?

I did it in substance.

For what purpose were you saying out loud what was coming over the wire?

So the other surveilling agents would know what was occurring during the surveillance, my supervisor included.

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## Castillo -

	Q		As	you	testified	before,	the	other	agents	in	the
car	with	you	were	who	om?						

A Special Agent Schnakenberg, Group Supervisor McMullan was there and Special Agent Dolan was also there in the vehicle.

> MR. LEVIN-EPSTEIN: I have no further questions of this witness.

> > THE COURT: Cross-examination, Mr. Todel?

### CROSS-EXAMINATION

#### BY MR. TODEL:

You stated that you have been with the Drug Enforcement Bureau for 13 months?

> A Correct.

Prior to that you were with the Customs Bureau?

A Correct.

Q What did you do with them?

A I was Customs Security Officer or Sky Marshal, if you will. Also a Customs Court Officer and a Customs Inspector.

Q When for the first time did you ever meet Agent Schnakenberg?

A I was introduced to Agent Schnakenberg when I arrived from training and I was assigned to the group in which he works.

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Castillo -

Q I see.

In other words, you have known Agent Schnakenberg for the past 13 months since you have been employed by the Drug Enforcement Bureau?

> No, slightly less, for approximately 11 months. A

Was he one of those -- like a partner of yours, that he'd train you?

He was a senior agent in the group to me.

I see.

Did you go out on various investigations with

him? 12

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Yes, sir, I did.

You went out on a number of them; is that

correct? 15

> A Yes.

Was Agent McMullan your supervisor? Q

A Yes.

Did he train you, too? Q

Yes.

You mentioned an Agent Dolan? Q

A Yes.

Was he also in this particular group? Q

Yes, he is.

Q How long did you know Agent Dolan?

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I know Agent Dolan, he came into the group, I would say I knew him for three, four months.

Now, Agent Castillo, from the point of time that the tape was missing, that would be on March 25 -sometime on March 25; is that correct?

> A Correct.

Did you make any record or memorandum of the conversation that you overheard?

> A No, sir, I did not. (continued next page)

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Did, if you know, Agent McMullan -- was Agent McMullan notified of the fact that this particular tape was missing?

A You're referring, I believe, to Group Supervisor McMullan?

Q That's right.

A Yes. In fact, I think he informed me that the tape was missing. I didn't inform him.

Q When did he inform you that the tape was missing?

A I believe it was a day or two later, from the 25th, so I would say it was between the 26th and 27th, if I recall correctly.

Q Did you discuss the missing tape with Agent McMullan?

A Yes sir. At that time --

Q Yes or no?

A Yes.

Q Did you discuss the missing tape with Agent Schnakenberg?

A Yes sir, I did.

Q You stated that Agent McMullan and Agent Schnakenberg and Agent Dolan were in the automobile and you stated you were translating what you overheard; is that correct?

A That's correct.

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A I don't know what her -- the outcome was to the trial.

O Was there any conversation between Georgie and

115a 1 Castillo-cross 223 2 Yes, approximately. Three or four. A 3 You spoke to Mr. Miranda at a later date; did 0 4 you not? 5 Yes sir, I did. 6 Where did you speak to Mr. Miranda? 7 I spoke to Mr. Miranda in Group Supervisor McMullans: office at the 57th Street headquarters. 8 9 What did you say to Mr. Miranda and what did he 10 say to you? 11 Mr. Miranda had been arrested at the --A 12 MR. LEVIN-EPSTEIN: Your Honor, I'd like to ob-13 ject at this point, only to the portion of the question 14 which goes to what Mr. Miranda may have said to the agent, in respect of it being hearsay. 15 If Mr. Castillo is being asked what did he say 16 to the defendant, certainly that is proper. 17 THE COURT: No. I think defense counsel can bring 18 out both sides. The Jury don't have to accept what 19 Mr. Miranda said, but I will let it come in anyway. 20 (Continuing) the conversation -- you want me to 21 continue? 22 Yes. What did you say to Mr. Miranda and what 23

A I had told Mr. Miranda thathe had been arrested

did he say to you?

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1 Castillo-cross and that the Government had a solid case against him and 2 whether he wanted to give us information concerning any other 3 people that may have been involved with him in the narcotics business. 5 Mr. Miranda told me that he was innocent, that 6 he was not involved in the narcotics industry and that he didn't -- that he wanted to speak to a lawyer. 8 That was the essence of our conversation. 9 Before that he had spoken with Agent McMullan 10 and Agent Schnakenberg; is that correct? A That's correct. In other words, they had questioned him first? A YEs sir. And you weren't present during that questioning; 0 were you? No sir, I wasn't.

Did you say anything that if he cooperated with the Government, that he'd be able to go home?

No sir, I never told him that.

Say anything about the question that there be very little bail, if anything, on him?

> A I never told him that.

What is the procedure when someone cooperates with the Government, if you know?

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MR. LEVIN-EPSTEIN: Objection as to irrelevancy. What happened in this case is more pertinent.

THE COURT: No. I will let him answer, to the extent he knows.

A (Continuing) What I always tell the people who have been arrested, depends onthe Court. I can't promise him anything at all. Usually it's favorable in the -- in the event that the person does cooperate, but we have no control of what the magistrate or the judges decide at all.

O Did you know that when Gloria Rodas and her friend Georgie had been arrested, that they were able to go home the same day they were arrested?

A I don't know whether they went home on the same day that they were arrested.

Or the following day?

A I don't know.

(Continued on next page.)

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# Castillo - cross

# CROSS-EXAMINATION

BY MR. TODEL (Cont'd):

When you told Mr. Miranda that the Government had a solid case against him, what did you tell him?

Specifically, what kind of a solid case did you tell him?

A As I recall, I had told him that a person that was working for us made a purchase while he was being surveilled -- that a surveillance was initiated at the time that he made the sale to her.

And did you tell him that you overheard the conversation between him and this person, this woman? Did you tell him that?

A I don't recall if I told him that, sir.

Q You don't recall?

A No, I do not.

In other words, you may not have told him that; is that correct?

A That's correct, sir.

And the solid case was that this woman said that she had purchased some cocaine from the defendant; is that correct?

A I had told Mr. Miranda that surveilling agents were there at the time when a purchase was made from him to

1	119a
	2 Castillo - cross
2	the woman.
3	Q You were one of the surveilling agents?
4	A I'm telling you, sir, what I told your defendant
5	not
6	Q Did you see anything happen while you were sur-
7	veilling the defendant and Mrs. Rodas?
8	A In the vehicle that they were in?
9	Q Yes.
10	A I saw from time to time only during the sur-
11	veillance.
12	Q Did you see anything happen in the car?
13	A No, sir, not
14	MR. TODEL: No further questions of this witness.
15	THE COURT: Any redirect?
16	MR. LEVIN-EPSTEIN: I don't believe so, your
17	Honor.
18	THE COURT: All right, you can step down.
19	Thank you.
20	(Witness excused.)
21	THE COURT: Next witness.
22	MR. LEVIN-EPSTEIN: The Government calls
23	Mr. Edward Manning.
24	THE COURT: Yes. Stand here, please.
25	The clerk is downstairs doing some other things.

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2	3 Manning - direct
3	Raise your right hand, please.
4 5	EDWARD MANNING, called as a witness
	having been first duly sworn by the Court, testified
6	as follows:
7	DIRECT EXAMINATION
8	BY MR. LEVIN-EPSTEIN:
9	Mr. Manning, what is your occupation?
. 10	A I'm a forensic chemist, sir.
11	Q Are you employed?
12	A Yes, sir. I am. By the Drug Enforcement Ad-
13	minstration.
14	Q During the course of your duties as a forensic
15	chemist, what is your job?
16	A Basically, sir, it is analyze substances that
17	are brought into the lab to determine whether or not they
18	contain a controlled substance.
19	Q What is a controlled substance?
20	A I can give you a for-instance. Cocaine or
21	heroin or marijuana.
22	Q Normally referred to as drugs or
23	λ Yes, sir.
24	Q What is your academic background?

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I have a B.S. in chemistry which I received in

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JUROR NO. 11: May I have a word with you? I have a case in court where I got hurt on an accident and I would like to be excused if I possibly could?

THE COURT: When is it coming up?

JUROR NO. 11: The 4th of October.

THE COURT: We should be through by then.

You are Mr. Tucker, Juror Number 11?

JUROR NO. 11: Yes.

THE COURT: Thank you, I will bear it in mind.
(Juror leaves courtroom.)

MR. LEVIN-EPSTEIN: If it pleases the Court,
I could go downstairs and expedite the matter that we
discussed at the sidebar.

THE COURT: Let me hear from Mr. Todel first.

MR. LEVIN-EPSTEIN: Very well.

MR. TODEL: At this time the defendant respectfully moves to dismiss Count 1 and Count 2 of the indictment on the grounds that the Government has failed to make out a prima facie case.

As I stated at the sidebar when Government's Exhibit I was being introduced into evidence, that I did not think there had been any testimony at all about the witness Rodas -- that the package which was examined and introduced into evidence is the package -- specifically the package that she allegedly seen the

defendant place into the valise.

I feel that the Government has failed to make out a prima facie case, your Honor.

THE COURT: I think you have an argument there and it is up to Mr.Levin-Epstein whether he wants to call Mrs. Rodas again, but I think the package was identified as being taken from the attache case in which Mrs. Rodas said it was placed.

I think it is a Jury issue. I will deny the motion.

We will take a ten minute recess now. You can consider what you want to do.

MR. LEVIN-EPSTEIN: Can go downstairs and maybe Mr. Todel you could go down and find out what progress there is.

Thank you.

THE COURT: Take five minutes with your defendant and consider what you are going to do and then go down.

MR. LEVIN-EPSTEIN: Let the record indicate that Agent Schnakenberg is taking custody of Government's Exhibit 1.

THE COURT: I certainly do not want half a pound of cocaine left around.

MR. LEVIN-EPSTEIN: I just wanted the record to

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(Recess taken.)

be clear.

MR. TODEL: I am going to try with the interpretor -- excuse me, the Assistant is not here --

THE COURT: You'd like an interpretor?

MR. TODEL: I think one should be available.

He understands English, but when he speaks it may be difficult.

THE COURT: You intend to have the defendant testify; is that it?

MR. TODEL: Yes, I have discussed it with him.

THE COURT: All right.

(Pause.)

THE COURT: Suppose I get a report as to what has occurred.

MR. LEVIN-EPSTEIN: I have informed the agents to obtain that witness -- that potential witness is present and I have spoken with her myself on the telephone. She is travelling to the office now and she will be here by 2:00 o'clock I hope.

As to Special Agent Dolan who Mr. Todel requested the latest information I have is that he is on sick leave in the hospital receiving barium tests. I have not received a medical update, but I could provide for the Court if it desires.

THE COURT: Are you ready in other respects?

MR. TODEL: If the Court pleases, as I advised the Court when Mr. Levin-Epstein was not here, I do plan to put the defendant on the stand. However, before I put the defendant on the stand I would like the opportunity to first speak with this woman Iris Maldonado In view of the fact that Agent Dolan could not be here. I would have put Agent Dolan on the stand first since he was in the automobile at the time this recording was taken -- I think it would be important for me to speak with Iris Maldonado before putting the defendant on the stand. It maybe after five minutes with her I will then proceed and I make a commitment to the Court that I will not change my mind, nor the defendant. He wants to take the stand in this case.

THE COURT: I have an interpretor here now.

Mr. Rodriguez, suppose you come forward.

MR. LEVIN-EPSTEIN: I would ask that if the defendant is going to take the stand with the assistance of an interpretor, that the Jury be made aware that Mr. Todel said at the sidebar that Mr. Miranda was sufficiently conversant in English not to require an interpretor throughout the stages of the trial.

THE COURT: Mr. Todel intends to put his questions in English --

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MR. TODEL: And I will also state to the Court that I will have the defendant answer in English to the best of his ability. It may become noticeable to the Court and Jury that there may be a point where it might not be clear, so I want the interpretor available so if that does occur, or if a question is not understood that the interpretor would be present.

MR. LEVIN-EPSTEIN: I have no objection to there being an interpretor present.

THE COURT: You will be available at 2:15?

MR. RODRIGUEZ: Yes.

MR. LEVIN-EPSTEIN: I have no objection to there being an interpretor here, but I wish the record to be clear that the defendant in a legal sense has not been subverted by there not being an interpretor present throughout the trial.

MR. TODEL: I am not making that point. The defendant does understand English. There are occasions when sometimes his expression in English isn't as good as his understanding.

THE COURT: Yes. I will make an appropriate statement to the Jury at the time.

(Continued on next page.)

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THE COURT: (Continuing) If I had known we

were going to have an hour's --

MR. LEVIN-EPSTEIN: I apologize for that, your Honor.

THE COURT: -- out of today, I could have had another case working because I have a non-jury case that is behind.

I wonder how -- let me see what else we can do now. I'll excluse Mr. Rodriguez until 2:15.

MR. RODRIGUEZ: Yes, your Honor.

THE COURT: Suppose you come up at 2:15 on this.

MR. TODEL: If the Court please, I had also asked Mr. Levin-Epstein that he should have this woman Toni, who is known by Toni, available also, and I didn't hear any statement from him as to her availability.

MR. LEVIN-EPSTEIN: I've been unable to locate her, your Honor. That's the best name that I have for her, in my --

THE COURT: Have you talked with Mrs. Rodas about it?

MR. LEVIN-EPSTEIN: I have not spoken with Mrs. Rodas about it. I will speak with her, your lionor.

THE COURT: Does Georgie know her?

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MR. LEVIN-EPSTEIN: I don't know.

THE COURT: All right. Suppose you do that during the recess.

Now, I would like to get the -- if the defense
-- if the defendant can complete his testimony this
afternoon, I'd like to go right into summations.
Otherwise we will lose all tomorrow morning.

How long will you want on your summation?

MR. TODEL: I would want one your, your Honor.

THE COURT: Really?

MR. TODEL: Yes.

MR. LEVIN-EPSTEIN: The Government had not planned to speak that long. However, of course it would depend on what Mr. Todel says in summation as to the length of the Government's summation.

THE COURT: Yes. We will see.

MR. LEVIN-EPSTEIN: As far as communication -THE COURT: We may be able to start a little
earlier tomorrow morning, if that's the case. Except
I have a dentist appointment tomorrow morning. I
cant's start that early.

Now, what about requests to charge?

MR. TODEL: If the Court pleases, I have found in the past, and I have prepared on Friday a letter to the Court and also to the assistant U. S.

128a attorney, I found that in the past the Court usually has prepared, in most of these cases, a request to charge and --THE COURT: I have a form that I have used in other narcotics cases. MR. TODEL: And what I have done here, your Honor, is given a number of points, your Honor, which I think the Court will cover during the course of their -- of the Court's charge, and there may be one further charge, your Honor, with reference to --THE COURT: Wait a minute. Let me go through

these. Indictment is not evidence. I also give presumption of innocence. I give burden of proof, beyond a reasonable doubt, elements are in, criminal intent.

Well, I think I'll cover that.

MR. TODEL: It will be covered, I know, your lionor.

THE COURT: Definition of knowingly and willfully, expert testimony.

Well, I suppose I can give it, but there is no contradiction really.

MR. TODEL: I don't think it is ncessary, not necessary in this matter, your Honor.

THE COURT: The same on opinion.

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MR. TODEL: Yes, your Honor.

THE COURT: Opinion evidence, circumstantial evidence.

I don't know what you mean by inference on inference. Our Court of Appeals has said that the rule about not drawing an inference on an inference is the -- not a sound rule. I'll deny that.

Reasonable doubt is part of burden of proof.

Prosecution and defense are equals in Court. Substantially so. No special weight because the Government employees -- I've already given that. Credibility,

I give something with respect to that. Motions and objections and statements of counsel, that's all right.

Now, I --

MR. LEVIN-EPSTEIN: The Government would --

THE COURT: I think there is some -- has been some law with respect to missing evidence. The weight to be given to it. If you have something on it, I'll consider it. If not, I'll give what I think is appropriate on it.

MR. LEVIN-EPSTEIN: The Government would also ask that you include a charge as to the equal availability of witnesses, your monor.

MR. TODEL: Your Honor, with all due respect to

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the Government--

THE COURT: It depends on what Mr. Todel says with respect to the witnesses.

Normally I say it is not necessary to produce every witness on a subject.

MR. LEVIN-EPSTEIN: I would only ask that the Court include as a part of that charge, your Honor, the standard form charge that is normally given, that the defense has the equal opportunity to call any witness as the Government.

(Continued on next page.)

4am2 gr/nc THE COURT: I don't think that is always true. You can't say that with respect to Georgie and Toni.

MR. LEVIN-EPSTEIN: The Government is making Georgie available to Mr. Todel. If he wants to call her as a witness he can.

THE COURT: Kind of late in the game.

MR. TODEL: If the Court pleases, with all due respect to Mr. Levin-Epstein, I think it was most unfair on the part of the Government at the end of the Government's case to turn over to me a list of witnesses where always in every case, they refuse to mention any witness at all. These are important witnesses, Toni and Georgie in this case. As MR. Levin-Epstein represented to the Court, he didn't even want me to inquire as to what type of work, what her name was.

MR. LEVIN-EPSTEIN: I would ask that the Court, if she is called by Mr. Todel, have the same ruling for the same reasons that were mentioned an the side bar.

However, Miss Rodas testified under her own name. If the Court in its discretion feels that Mr. Todel requires Miss Maldonado or if it's Mrs. Maldonado, I don't really know, as a witness, I

132a would ask that she be allowed to testify under her true name but without giving up her address as well. THE COURT: I think that is right, but I think the jury can then draw what inferences Mr. Todel may urge on them. MR. LEVIN-EPSTEIN: That is correct. THE COURT: With respect to the limits on his ability to testify -- to test the credibility.

MR. LEVIN-EPSTEIN: Yes. But I would ask the Court to give an instruction as to the equal availability of the witness to be called.

THE COURT: Do you have any instruction on missing evidence?

MR. LEVIN-EPSTEIN: No, your Honor.

THE COURT: There has been something in the Court of Appeals on it fairly recently.

MR. LEVIN-EPSTEIN: I will research the matter and present it to the Court; what's available.

THE COURT: I think I will excuse the jury then until 2:15, really, because Mr. Todel should have an opportunity to talk with Georgie.

MR. LEVIN-EPSTEIN: Fine.

THE COURT: And determine whether she is going to testify or what his position will be.

MR. LEVIN-EPSTEIN: Fine.

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THE COURT: Will you have any other witness besides the defendant?

MR. TODEL: No, your Honor.

THE COURT: And isn't it possible -- I don't know how long your cross-examination of the defendant will be.

MR. LEVIN-EPSTEIN: Neither do I, your Honor.

THE COURT: Whether it's possible that we will be ready for other -- for summations at 3:00 o'clock?

MR. LEVIN-EPSTEIN: It's always possible, your Honor, however, I would not like to comment on the likelihood of it, considering I don't know what the defendant will testify to.

THE COURT: All right.

I'm going to wind up with Willowbrook going over until tomorrow afternoon. That will have to happen.

That's what happens to civil cases.

All right, let's bring in the jury.

(Jury present.)

THE COURT: Ladies and gentlemen, there are always somethings that have to be considered between the Government case and the defense case and it appear now that we're not going to be able to proceed until after lunch.

I have granted a recess until 2:15. That will

give you a chance to do some errands during the lunch hour, but you have heard only the Government's side of the case.

Do not talk about the case among yourselves or with anyone else in the interim. And do not talk to anybody in the courtroom that you may see as you are going back and forth.

You can use the jury room as much as you want or you can be free on your own time. I think the case will go to the jury tomorrow and that we should —

I would hope you may be able to reach a decision tomorrow.

In any event, we will -- may be able to hear summations this afternoon, with instructions in the morning. Otherwise, they'll all go over until tomorrow morning.

Meanwhile, you have my admonitions and you are excused. Please be prompt at 2:15. I think we will be able to proceed then without any further delay.

Good afternoon.

(The following occurred in the absence of the jury.

THE COURT: I don't think there is anything further that counsel need of me.

MR. LEVIN-EPSTEIN: Thank you, your Honor. (Lunch recess.)

HS?tr | T1/R1 pm

THE COURT: I understand Mr. Levin-Epstein is on his way up.

(Pause.)

THE COURT: How about Mrs. Mirandola?

MR. LEVIN-EPSTEIN: She is here in my office, having just arrived.

THE COURT: We will take another 15-minuted recess. I thought we were ready to proceed one way or another. I think Mr. Todel should have an opportunity to talk to her.

MR. TODEL: Is Toni here also?

MR. LEVIN-EPSTEIN: No, your Honor.

In order to clarify this business about Tony, in response to the Court's instructions I did request of both Georgie and the witness Rodas as to the where-abouts of this witness Toni. Neither of these people can or will tell me where.

I have informed them that the issue has come up in court and I have made every effort to obtain the location of Toni, but I can indicate to the Court at this time that I have no knowledge and the Government as to that person's whereabouts.

THE COURT: I will deal with that later on.

MR. TODEL: I was just wondering.

Mr. Levin-Epstein stated that the witnesses --

Georgie, Miss Rodas stated that they cannot or will not tell. I do not know which one it is.

MR. LEVIN-EPSTEIN: I do not either.

THE COURT: They stated they do not know.

MR. LEVIN-EPSTEIN: They stated that they have no information that they want to give me as to Toni. I do not know how to interpret that.

THE COURT: All right, let us take a recess for Mr. Todel to speak to Georgie. We will resume in 15 minutes.

(Recess taken.)

THE COURT: Have I any report on Georgie?

MP. TODEL: I spoke to Georgie, your Honor.

Although it is my belief that she knows where Toni
is and knows Toni's last name, she wouldn't give the
information.

THE COURT: Yes.

Are you going to call her?

MR. TODEL: I do not think she would add anything at this particular time to the trial, because
I feel that I would have to do further investigation
to determine whether or not I would use her at this
time.

By the way, at first when I entered Mr.

Levin-Epstein's office Miss Gloria Rodas was with her

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and finally she did leave and in the middle of my conversation with Georgie she came into the room quite disturbed and she felt that she wanted to advise Georgie that she was entitled to have a lawyer and not to say anything at all unless she wanted to have a lawyer present and so on.

This is what did occur.

MR. LEVIN-EPSTEIN: Let me clarify the beginning for which Mr. Todel was not present.

While Mr. Todel was speaking with the witness in my office, without anyone present, Miss Rodas approached me and asked me whether or not I had advised Georgie as to her right to have an attorney present.

I told Miss Rodas that I had not so informed her, but I had informed her that she had no obligation to speak with me as the United States Attorney and further she had no obligation to speak with anyone, but it was her choice.

Of course she apparently decided to speak to Mr. Todel. When Mrs. Rodas was told this, she asked me if I would further advise her of her rights to an attorney. I told her this was not a typical situation where somebody would be obligated to be advised as to that. I said that I would go in and

in Mr. Todel's presence inform Georgie of what I informed the Court just now.

THE COURT: All right, you are not going to call her and the records shows whatever has taken place. Let us bring in the Jury.

My first step would be to swear in the interpreter.

MR. LEVIN-EPSTEIN: Before the jury comes in, is it all right for us to now inform these two people that they may leave?

THE COURT: No, I wouldn't tell them that.

MR. LEVIN-EPSTEIN: Very well.

THE COURT: It was hard enough getting them here.

MR. LEVIN-EPSTEIN: I understand.

(Jury present.)

THE COURT: Ladies and gentlemen, as you have observed the course of a trial is not always predictable. We are now ready to resume and my first step is going to have an interpreter sworn in by the Clerk and then to have Mr. Todel explain the purpose of the interpreter.

(Interpreter sworn.)

THE CLERK: State your name, please.

THE INTERPRETER: Emile Rodriguez.

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THE COURT: Mr. Rodriguez, suppose you sit in the chair by the witness stand and Mr. Todel you may proceed.

ORLANDO MANUEL MIRANDA, having been first duly sworn by the Clerk of the Court, testified as follows:

THE CLERK: State your full name, please.

THE WITNESS: Orlando Manuel Miranda.

THE COURT: All right, sit down Mr. Miranda.

#### DIRECT EXAMINATION

BY MR. TODEL:

Q Mr. Miranda, I am going to ask you a number of questions and keep your voice up. If there is any question that you do not understand or anything that I may say or the United States Attorney may say on examining you — if you do not understand the question we have an interpreter here who will be able to explain the question to you or repeat it in Spanish if it is necessary.

At the beginning we will try to go without using any Spanish interpreter. Just keep your voice up and speak slowly.

- A Yes.
- Q Mr. Miranda, how old are you?
- A 41 year old.
- Q Where were you born?

1			140a
			Miranda-direct 272
2		λ	In Cuba.
3		Ω	How long have you been in the United States?
4		A	1956.
5		Q	And where do you live at the present time?
6		Λ	2314 96th Street, Elhurst, Queens.
7		Q	Elhurst, Queens?
8		A	Yes.
9		Q	With whom do you live at this address?
10		Α	Mother, father, two brothers and my daughter.
11		Q	How old is your daughter?
12		A	11 year old.
13		Q	Is the mother of your daughter living with you
14	at the	prese	nt time?
15		Λ	No sir.
16		Q	Do you have custody of your daughter?
17		A	Yes.
18		Q	Who gave you custody of your daughter?
19		Α	The United States Supreme Court.
20		Q	What type of work are you doing at the present

I manage a bar.

Do you have any interest in the bar?

51 per cent of the stock in the bar.

In other words, the bar is a cooperation; is

time?

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#### Miranda-direct 273 that correct? 2 3 A Yes, sir. 4 You have a 51 per cent interest in it. Q 5 What is the name of the bar? A Jaguar Lounge. 6 Q Where is it located? 12-51 Roosevelt Avenue, Corona. 8 A 9 Q Corona, Queens? 10 A Yes. How long have you had an interest in this bar? Q 11 Approximately two years. A 12 Prior to your having an interest in the bar, 13 what type of work did you do? 14 I was a longshoreman. 15 Q Longshoreman. 16 Where in New York did you work as a longshore-17 man? 18 A Brooklyn. 19 How long were you a longshoreman? Q 20 A 13 years. 21 How long? 22 13 years. 23 Q 13 years.

Have you ever been convicted of a crime?

with her?

	143a
1	Miranda-direct 275
2	A She say "Georgie and Toni" is the name of the
3	two sisters. She introduce me.
4	Q Did she come to your bar many times after you
5	had met her?
6	A Two, three times a week.
7	Q Was she always alone or with someone?
8	A She was with the two sisters every time.
9	Q Did you ever have any conversation with her
10	about going into business with her or a partnership with he
11	A Business.
12	Q Or a partnership?
13	A One time we talked about business because we
14	got in my place my bar I got like a discoteque on the
15	second floor. She told me she got a lot of connections and
16	we can put a striptease in the bar upstairs we could
17	make very much money.
18	I say I no like this thing over there because
19	I got to much the baseball season starts very soon and
20	the police they no like this kind of business over here
21	because in the corner is Shea Stadium.

Q About how far is Shea Stadium from your bar approximately?

About two blocks.

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Q Did she ever mention the name to you of

# Joaquim Nieves?

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- A Yes.
- Q In what connection did she mention the name Joaquim Nieves?
- A That's the gentlemen that introduce me with her.
  - Q Where did that happen, in your bar?
  - A In my bar, yes.
- After she introduced after Mr. Vieves introduced BeBa to you or yor to BeBa, did you have a conversation with BeBa about Joaquim Nieves?
  - A Yes.
- Q Was Joaquim Neives present during that conversation?
  - A No sir.

MR. LEVIN-EPSTEIN: I will ask that the questioning not be so leading. I understand the remarks made by Mr. Todel, but Mr. Todel has been leading the witness.

THE COURT: Overruled.

- Q What did BeBa say to you about Juaquim and what did you say to BeBa if anything?
  - A She told me I know Joaquim for many years --MR. LEVIN-EPSTEIN: I am sorry?

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-- she told me, see I know Joaquim for many years. I say, yes, I know him. After I come into this country I meet this guy -- I live on West Side before --

Was there any other conversation with BeBa with Q reference to Joaquim Nieves?

Yes, she asked me what kind of job we do and I say we work with the Government against the police force.

Did you have any further conversation with BeBa with reference to Joaquim?

> A No, sir.

Anytime in March of 1974 did you have any conversation with BeBa with reference to cocaine?

No, sir.

(Cont'd on next page.)

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DIRECT EXAMINATION

BY MR. TODEL: (Cont.)

Q You heard mention during the course of her testimony about a meeting to take place at Las Fuentes Espanola?

Do you remember that?

A Yes, sir.

Q Were you supposed to go to that particular restaurant, yes or no?

A No, sir.

Q DId you go to the restaurant?

A I pass over there every time when I come from my house.

Q Did you arrange at any time to meet her and Toni and Georgie at that restaurant?

A Yes, sir.

Q Would you tell the Court the circumstances or the facts about the arrangement of this meeting?

A The thing is my girlfriend was jealous of this Toni, so you know, Beba say maybe we meet in another place not in your place and that's where you could talk with Toni.

Q Did you go to Las Fuentes Espanola to talk to them on that particular night?

A No, sir.

Q I show you Defendant's Exhibit B in evidence and

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147a
2 Miranda - direct 279
I ask you if you can identify who Toni
A The on that got the hat.
Q Is she an attractive girl?
A I think so.
Q Now, did you ever have an accident with your
automobile?
A Yes, sir.
Q And there came a time when Beba drove you to
pick up your automobile, was that correct?
A Yes, sir.
Q Do you know the exact date?
A ARound March I don't know exactly the date.
Q Where did you meet Beba?
A In my bar.
Q Was she alone?
A No, was the bar maid and myself .
Q And was anyone with her when she came to the
bar?
A The two sister come.
Q Was Toni there?
A Toni there.
Q And Georgie?
A Right.
Q And did you have a conversation with Beba?

	200
1	148a
2	3 Miranda - direct
- 3	A Yes.
4	And what did you say to Beba at that time and what
	did she say to you?
5	A I say she can give me a ride I had to go
6	pick up my car and she say yes.
7	Q And she drove you over to the body and fender
8	shop; is that correct?
9	A Yes, sir.
10	Q About how far
11	MR. LEVIN-EPSTEIN: Objection as leading.
12	THE COURT: Overruled.
13	Q How far away is that shop from your from the
14	Jaguar Lounge?
15	A About five minutes.
16	Q When you were in the car, was there any conver-
17	sation with Beba at that time?
18	A No, sir.
19	Q Did anything happen in that car?
20	A Yes, sir.
21	Q Would you tell the Court and jury what happened in
22	that car?
23	A Yes, sir. After we drive a couple of minutes
24	she say, "Will you pick up the baggage in the bottom of the car?"
25	And I get and she open up for me and when I open up I see

## Miranda - direct

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A Yes.

Q DId you ever have a conversation with Beba as to your going to Puerto Rico so you could bring back cocaine?

A No, sir.

Q Did there come a time in May of 1974 that you were introduced to someone who was supposed to be the brother of Georgie -- of Beba?

A Yes, sir.

Q Would you tell the Court and jury what conversation, if any, took place between you, Beba and the person who was introduced as her brother?

A This was in my bar. She was Georgie, Toni and Beba. So he bring his brother. So she introduce me like his brother, so he told me my brother got lot money to buy cocaine so I told, look, Beba, don't tell me that shit, if you talk that shit with me I no want to talk to you no more and I walk over from her.

Q Do you remember the date you were arrested?

A Yes.

Q That was on May 31, '74?

A Yes, sir.

Q Who arrested you?

A Mr. McMullan --

Q Who?

151a 283 1 Miranda - direct 2 McMullan, Mr. Schnakenberg and another agent --3 I don't know his name. Q 4 I see. About what time of day did they arrest you? 5 About 5:00 o'clock in the morning. A 6 Was that after you closed the bar? Q 7 A 8 Yes, sir. Q And where did they take you? 9 They took me to 57th Street in Manhattan. A 10 Q 57th Street in Manhattan? 11 Yes. 12 Who questioned you when you got to the office 13 at 57th Street in Manhattan? 14 Mr. McMullan and Mr. Schnakenberg. 15 What did MR. McMullan say to you? 16 They say to me they watch me for long time and 17 they really got me now. 18 What did you say to him? 19 I say, you no got me nothing, what I do to you A 20 21

-- say nothing -- so Mr. Schnakenberg say, we got you because we got your fingerprints in the baggage you get over there --

What else did they say to you?

See, I work with the Government -- work with them I can go home right now. In other words, my word against the

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word of the agents. So I say I have nothing to do with that, so you can do anything you want to me.

Q Did Mr. Schnakenberg say anything to you with reference to the money?

A Mr. Schnakenberg told me he saw me while I count the money on College Point and 38th Road.

Q What did you say to him?

A I say you liar. He told Mr. McMullan, let me bust him around because you don't know these people. I say, you hit me over here you have to kill me because I hit you back.

Q Did any of the agents say to you about, stop talking to him, just stop wasting our time with him?

A Yes, the other agents when they arrest me they say that words to Mr. Mc Mullan.

Q What did Mr. Mc Mullan say to Mr. Schnakenberg when Mr. Schnakenberg wanted to bounce you around?

A He say no.

Q Pardon?

He say no.

Q Did there come a time when you spoke with Mr. Castillo?

A Yes, sir.

Q Was that later in the morning?

Miranda - direct

A About 8:30 in the morning.

Q And did you speak in English or Spanish?

A Mr. McMullan say, explain to Mr. Castillo to explain me in Spanish and make understand more --

Q What did Mr. Castillo say to you and what did you say to him?

A He say to me, see, I cooperate with them I can go home and not problems -- in other words, you have to be in line -- I had to be in hard line --

THE COURT: Explain that, pleasei

THE INTERPRETER: He gave me to understand that if I didn't cooperate with the agents -- with the Government -- that I would have a tense problem or a serious problem before me.

A The first thing when they told me -- when they say Mr. McMullan take the picture and send it down -- the first picture is I want to close your bar and I want to destroy you -- it has to be your word against the agent's word.

MR. TODEL: You may inquire.

THE COURT: You may cross-examine, Mr. Levin-Epstein.

(continued next page.)

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Miranda- cross

CROSS-EXAMINATION

BY MR. LEVIN-EPSTEIN:

Do you understand me when I am speaking to you, Mr. Miranda?

> A Yes, sir.

You testified on direct examination when Mr. Todel was asking you the questions, that you first met the woman you knew as Beba -- Miss Rodas -- in March of this year; is that correct?

> A Yes, sir.

Do you recall when in March you first met her.

I don't remember.

Could it have been the early part of March?

Could be the early part of March. A

Could have been February 28th -- the last day in February? There is no doubt that you met her around that period of time?

I remember her, she come in my place.

Is there any doubt that you met Beba around the beginning of March; yes or no?

No.

Q No doubt?

THE INTERPRETER: There is no doubt.

And there is no doubt after you met Beba she Q

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2	155a Miranda - cross
came into you	ur place two or three times a week thereafter?
A	Yes, sir.
Q	No doubt about that?
A	Yes, sir.
Q	No doubt. And there is no doubt that you had
a discussion	with her at that time about business, is there?
A	We talking about the business, striptease.
Q	Yes or no, you had a discussion with her about
business; the	at's right?
A	Yes, sir.
Q	There is no question about the fact that you
told her that	you had concern about the police coming into
the place bed	cause it was so close to the baseball season?
A	That's correct, because
Q	I am asking you if there is a question in your
mind about th	at and not for an explanation.
A	It is correct.
Q	No question about that?
A	No question about that.
Q	There is no question that you were introduced
by Beba to Jo	aquim Nieves?
A	Yes, sir.
Q	No question?
A	No.
	came into you  A  Q  A  Q  a discussion  A  Q  business; that  A  Q  told her that  the place bed  A  Q  mind about th  A  Q  by Beba to Jo  A

### Miranda - cross

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You knew Joaquim Nieves for quite sometime; is that correct?

A Yes, sir.

Q No question?

A When I come into this country.

There is no doubt that you had a date to meet Gloria Rodas at Las Fuentes Espanola Restaurant, is there? Is there a question in your mind?

A I got to see her, Toni over there with Gloria.

THE COURT: I am not sure that the witness
understands the question.

The question was whether he agreed -- that it was a pre-arranged meeting.

Could you take up with him -- stand up and talk alongside with him.

THE INTERPRETER: Yes, sir.

"Yes, I went to see her there because my girl-friend" --

MR. LEVIN-EPSTEIN: I think that answers the question.

THE WITNESS: Didn't want me to talk to her any more. I would go to see Toni there to see that there wouldn't be any more friction between us.

Q All right. So you agree then?

A Yes, sir.

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4 Miranda - cross 289
Q There is no question about that?
A Yes, sir.
Q Did there come a time after this meeting was
arranged in the Las Fuentes Restaurant where you met with
Beba in the Jaguar Lunge that very night?
A I don't remember.
Q You don't remember.
Did there come a time during the course of
that evening where you discussed the purchase of anything by
Beba in the Jaguar Lunge?
A No, sir.
Q That never happened?
A No, sir.
Q Did you hear Miss Rodas' testimony?
A Yes.
Q She was not telling the truth?
A Yes, sir.
Q She wasn't?
A Not the truth.
Q You testified by the way that the first time
you met Gloria Rodas was in March or late February of this
year; right?
A Yes.
Q When you met with them at the Las Fuentes

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## Restaurant, who else was present?

MR. TODEL: Objection. There was no testimony of any meeting at the Las Fuentes Restaurant.

THE COURT: That's what I tried to bring out.

I thought he went there by arrangement to see his
girlfriend.

MR. LEVIN-EPSTEIN: That was my understanding, your Honor.

THE COURT: We can have it read, if you want.

Go ahead with your questioning.

- Q Did you mest with them at the Las Fuentes?
- A No, sir.
- Q Did you meet with them that night?
- A I don't remember.
- You don't remember if you met with them at all?
  How many times did you meet with Gloria Rodas?

A She go to my place two, three times a week so almost every time she come in my bar I'd be there.

Q Did you have conversations with her each time she came in?

- A Sure.
- Q What ..did you talk to her about?
- A She good customer and good spending so I put a lot of attention on her because she spend a lot of money in

Q Did you ever meet with anybody that you heard testimony about here in another bar? And I will be specific --

A Specific in the -- another bar I only meet with Toni one night.

You never met with Gloria at any other place?

A No, sir.

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Q I show you what has been -- Defense Exhibit B.
You identified this during your direct examination.

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This is the party --

You met with her after that. This is not at the Jaguar Lounge.

A No, that's the night at the Patio.

THE INTERPRETER: That was during the third anniversary of the El Patio Club.

- Q You met with them in another bar?
- A Yes.
- A Had you forgotten that? Is this the same photograph that was shown to you on direct examination by Mr. Todel?
  - A Yes, sir.
- Now, in response to a question that your lawyer asked you, you said that at no time had you ever discussed cocaine with Gloria Rodas; is that correct?
  - A Right.
  - Q No question about that?
  - A No question.
  - Q You never discussed cocaine with her?
  - A Never discussed cocaine about that.
- You testified that sometime in March you had an accident with your car?
  - A Yes, sir.
  - You testified that after you had the accident

1	8	Miranda - cross 293
2	with your car	r, Gloria Rodas drove you to get your car; is
3	that correct:	,
4	A	Yes, sir.
5	Q	And you'testified that she arrived at your bar
6	and met you	there, the Jaguar Lounge?
7	A	Yes, sir.
8	Q	There is no doubt about that, is there, no
9	question?	
10	A	No question.
.11	Q	And she arrived at the Jaguar Lounge about
12	what time tha	t day?
13	Α	About after 4:00 o'clock.
14	Q	She wasn't lying about that when she testified,
15	was she?	
16	A	No, sir.
17	Q	Then she was telling the truth; right?
18		THE COURT: He has answered once. That's enough.
19	Q.	She came inside the bar?
20	A	Yes, sir.
21	Ω -	Did you meet with her there?
22	A	Yes, sir.

Did you have a conversation with her?

No. We ask -- I asking when we leave to get

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1		162a
	9	Miranda - cross 294
2	Q	What time did Gloria normally come to the
3	Club Jaguar?	
4	A	In the nighttime.
5	Q	About what time?
6	A	10:00, 10:30.
7	Q	How many times did she come to the Jaguar a
8	10:00 or 10:	30, would you say?
9	A	In the weekend.
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12		(Continued on next page.)
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GR/rp

Yes or no, is there any question about that?

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there.

Q

2 Miranda-cross 296 She come because she want to bring the other 2 girl with her. That's the point I have to explain to you. 3 4 MR. LEVIN-EPSTEIN: Your Honor --THE COURT: I will let him answer. 5 But there is no question that she came there 6 pursuant to an agreement between the two of you to meet there 7 at 4 o'clock; right? Yes or no. 8 With her sister. A 9 0 Can you answer the question yes or no? 10 A With his -- With her sister she come in. 11 Q But that was pursuant to an agreement that you 12 had; right? 13 A Yes. 14 O.K. That's all I'm asking. 15 The sister. 16 That's all I'm asking. 17 Isn't it a fact that this agreement was made a number 18 of nights before, in the Jaguar Lounge, that you would meet 19 there on March 25th at 4 in the afternoon? 20 A Yes. 21 No question about that; is there? 22 Yes. 23 So she wasn't lying about that when she testi-Q

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fied; was she?

1	3 Miranda-cross 297
2	A Only only she no say it was because her
3	sister
4	Q Can you answer that question yes or no? So she
5	wasn't lying about that?
6	A She don't say to you
7	Q She did meet with you at 4 o'clock on March 25th
8	at the Jaguar Lounge; right?
9	A Yes, sir, she was there.
10	Q And she arrived with Georgie, right?
11	A Georgie, and the sister come at the same moment.
12	Q There is no question about that?
13	A Yes, sir.
14	Q You remember that?
15	A Sure.
16	Q And you had a conversation with her, did you not
17	when she arrived? Did you have a conversation with her on
18	that afternoon when she arrived at the Jaguar Lounge?
19	A Yes. She say I told her bring me to pick up
20	my car.
21	Q Did you discuss the fact that your car was
22	damaged when you made arrangements to meet with her at 4
23	o'clock?
24	A No, sir.

It was just a coincidence that the car was

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Q

## 166a Miranda-cross

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damaged?

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A Yes, sir. The car is what -- the thing was finished. I had to go pick up myself.

Q And you had a conversation with her. What was that conversation in the Jaguar Lounge on March 25th?

A Only ask the favor for bring me down over there to the body and fender and she say she was agreed.

What else did you say?

A She says come on down and we go together.

Q Did you discuss where the body shop was?

A No body shop. Only I give -- only I say give me a ride to there. It was a close place.

So you didn't discuss anything more than what you've testified to?

A Yes, sir.

And you were silent after that?

A Silent?

Q You didn't say anything and she didn't say anything to you?

A We drive down.

Q O.K. We're coming to that.

A 0.K.

Q And there came a time when you left the Jaguar Lounge with Gloria Rodas on that afternoon; right?

1	5	167a 299 Miranda-cross	
2	A	Yes.	
3	Q	What car did you get into?	
4	A	To her car.	
5	Q	Between the time you walked from the door of the	ne le
6	Jaguar Lounge	until you reached her car, did you say anything	,
7	to each other	?	
8	A	No. We talking nothing special, you know.	
9	Q	You didn't say anything?	
10	A	We talking about I don't remember what we	
11	talking about	. Something like	
12	Q	You don't remember. When you arrived at her	
13	car, after le	aving the Jaguar Lounge with her, did you get in	to
14	the car?		
15	A	Yes, sir.	
16	Q	Where did you sit?	
17	A	Nothing. I say I teach her the way we have	
18	to go because	she didn't know where.	
19	Q	Where did you sit in the car?	
20	A	Close to her. The front.	
21	Q	In the front seat next to her?	
22	<b>X</b>	Yes.	
23	Q	Did she drive?	
24	A	Yes, sir.	

What were you wearing on that day?

Q

1	6 Miranda-cross 300
2	A I don't rember, sir.
3	Q Prior to arriving at the Jaguar Lounge that day
4	by the way, what time did you get to the Jaguar Lounge on
5	that day?
. 6	A Close a quarter after 3. Something like that
7	because I start cleaning up the place.
8	Q About a quarter after 3. Where did you come
9	from?
10	A Come from?
11	Q Where had you come from?
12	A From the hotel.
13	Q What hotel is that?
14	A Kings Inn. Kings Inn.
15	MR. LEVIN-EPSTEIN: I'm sorry, your Honor.
16	THE INTERPRETER: King's Inn.
17	Q The King's Inn?
18	A Yes.
19	Q Thank you.
20	Getting back into the car, you and Miss Rodas, as she
21	testified, got into her car; right? And you pulled away from
22	the Jaguar Lounge?
23	A Yes.
24	Q And you drove down Roosevelt Avenue?
25	A All the way down Roosevelt Avenue.

1	7 Miranda-cross 301
2	Q No question about that; is there?
3	A No question about it.
4	Q Did you have any conversation with her while
5	you were in the car driving down Roosevelt Avenue?
6	A Because she got to give me the favor to drive
7	me.
8	Q What did you say to her?
9	A What?
10	Q What did you say to her in the car?
11	A In the car?
12	Q Yes.
13	A Nothing. We driving and only ask my carwas
14	broke, I have to pick it up.
15	Q How long a trip was that?
16	A Five minutes.
17	Q For five minutes you talked about your broken
18	fender?
19	A Yes. No broken fender. Like we talking now.
20	Something to say to her.
21	Q What did she say to you?
22	A Nothing. You know, only I saw she told me
23	to pick up the valise.
24	Q Before we get to that, did you have any conver-
25	sation before we started talking about the baggage in the back

1	8 Miranda-cross 302
2	of the car?
3	A No conversation.
4	Q No conversation at all?
5	A At all.
6	Q But you heard her testify that there was a
7	conversation?
8	A Sure.
9	Q And there was no conversation at all?
10	A No conversation.
11	Q No conversation about a package?
12	A No.
13	Q No conversation about a \$6,000?
14	A No conversation, sir.
15	Q What was the conversation about?
16	A Nothing. Like I said to you, I don't remember.
17	It's a couple of
18	Q You don't remember? Did you talk to her at all
19	during that trip?
20	A Yes.
21	Q What did you talk about?
22	A About the car, about I want to pick up my car,
23	they have to finish fixing today.
24	Q Once you told her that you had to pick up the car
25	which you testified was back at the Jaguar Lounge, and once you

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told her it was being fixed and be completed that day, and
once you told her you could pick it up that day, what did you
tell her then?

THE INTERPRETER: Could you repeat the question, please.

THE COURT: You had better rephrase the question, Mr. Levin-Epstein.

MR. LEVIN-EPSTEIN: Yes, your Honor.

Once you finished telling her that the car had been fixed and was ready to be picked up, which you have said you told her at the Jaguar Lounge?

A No. While we were driving down.

Once you finished telling her that while you were driving there, what did you tell her then? What did you tell her then?

- A I said that's the only conversation we got.
- Q That's the only conversation that you had with her?

You heard Agent Castillo testify, did you not?

- A Yes, sir.
- Q And is he telling the truth? Answer yes or no.
- A No.
- Q He's lying also; right?
- A Yes, sir.

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1	172a 304 10 Miranda-cross
2	Q That's your testimony?
3	A Yes, sir.
4	Q All right. So now you have Gloria Rodas
5	testifying and she is lying; right?
6	THE COURT: You are getting are getting argumen-
7	tative rather than cross-examining, Mr. Levin-Epstein.
8	MR. LEVIN-EPSTEIN: Very well, your Honor. I'll
9	go on to something else.
10	Q You testified on direct examination that while
11	you were driving down there, Gloria Rodas said to you, "Reach
12	into the back seat," is that correct?
13	A Yes, sir.
14	Q When did she tell you this?
15	A While we reach College Point. We got to turn
16	around the right side.
17	Q Then she said out of the clear blue, "Reach into
18	the back seat"?
19	A She said, "Pick up the valise, was in the back
20	seat."
21	Q Did you ask her why she wanted you to pick up
22	the bag?
23	A I didn't ask her this question.
24	Q You didn't ask her that. All right.
25	Were you surprised at this request?

1	173a Miranda-cross
2	A No surprised. She said me pick up.
3	Q What did you do after she picked you to pick up
4	the bag?
5	A The valise?
6	Q Yes.
, 7	A She say, "Open up for me."
8	Q Opening up for her?
9	A Yes.
10	Q O.K. What did you?
11	A I open up.
12	Q Then what happened?
13	A Then I see some some white powder. I saw a
14	white powder.
15	Q Mr. Miranda, I show you what's been marked as
16	Government's Exhibit No. 1 in Evidence. I ask youif you
17	recognize it.
18	A I don't recognize that.
19	Q You don't?
20	A No.
21	Q You've never seen this before?
22	A I never seen that. Some white thing over there.
23	But I don't know it's this or the or whatever it is.
24	Q Speak up so the jury can hear you.
25	A I see some white powder inside but I don't see

	miranda-cross 306
2	if it's this or another thing. She told me that's only for
3	
4	
5	Q Making you what?
6	A Afraid.
7	Q Afraid?
8	A Yes.
9	Q What reason did Miss Rodas have to make you
10	afraid?
11	A Asking her.
12	Q Were you surprised to see the white powder in th
13	bag?
14	A That's no surprise for me. I no see. I know
15	that's not mine.
16	No surprise for you. What was the white powder
17	in, that you saw?
18	A I no see. When I see that thing, I close the
19	valise. I say, "I know you got
20	Q No. The question was, Mr. Miranda, inside the
21	valise, you said you saw white powder?
22	A That's right.
23	Q What was the white powder contained in?
24	A Yes. She say
	Q No. What was was it contained in a contained

	1 13 Miranda-cross
	A I don't know. That's in plastic like that
:	(indicating).
4	Q It was in plastic?
- 5	A Yes.
6	Q What kind of plastic? What did it look like?
7	A Something like that (indicating).
8	Q It looked just like this?
9	A Yes.
10	Q How much white powder was there?
11	A I don't know.
12	Q More than this (indicating)?
13	A I can't say.
14	Q Less than this (indicating)?
15	A Maybe. Got some bunch but
16	Q Didn't look like about the same amount as this?
17	A I can't tell you the truth, I don't know.
18	Q You don't know?
19	A Something like something like that.
20	Q Did you know what was contained in the white
21	powder that you saw?
22	A I don't know.
23	Q You didn't know what it was?
24	A I didn't know what it was.
25	Q Were you afraid?

1	14	Miranda-cross 308
2	A	Afraid? That is the way I told her. I know
3	because they	bring that shit in this car, I don't drive with
4	her in the c	ar.
5	Q	What did you mean by that?
6	, A	Because she say she say that's cocaine.
7	Q	She told you this was cocaine?
8	A	Yes.
9	Q	Not this (indicating), but of course the package
10	that you saw?	
11	A	Yes.
12	Q	In the bag.
13	You kn	ow what cocaine is; don't you, Mr. Miranda?
14	A	Naturally. Who know?
15	Q	Naturally. So you were afraid when you saw the
16	cocaine?	in the second se
17	A	Naturally.
18		(Continued on next page.)
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Did you know that cocaine was illegal to Q possess? A Sure. And this was back in March of '74; right? 0

March, '74, yes.

O.K. Let's jump ahead for just one moment, Q Mr. Miranda. We will come back. But after you left the and you went and you picked up your car, as you've testified, what was the first thing you did after picking up your car?

I pick up my car. I start driving. I wait for her. I say I go to the Jaguar.

Did you go back to the Jaguar?

Yes, sir.

Did you stop at the local police station? Q

Myself?

Yes.

No, passing the Jaguar. I was in the Jaguar.

You were in the Jaguar. I know. Q

On the way to the Jaguar, did you stop at the local police station?

> A No, sir.

When you got to the Jaguar, did you call the Q police up on the phone?

No, sir.

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1	178a 310 Miranda-cross
2	On March 26th, the next day, did you call the
3	police up on the phone?
4	A No, sir.
5	Isn't it a fact that you never called the
6	police and told them about this white powder that you
7	found in the bag; right?
8	A No, sir.
9	O Never called?
10	A No, sir.
11	Q Yet, you know, as you've testified, that
12	cocaine is illegal to possess; right?
13	A Yes, sir.
14	But you didn't call the police?
15	A Yes, sir. She told me that's
16	THE INTERPRETER: She told me it was some
17	white powder or talcum in order to make me afraid.
18	O Mr. Miranda, which is it that she told you?
19	A moment ago you told the jury that she told you it was
20	cocaine. Now you're telling the jury that she told you it
21	was talcumpower or white powder. Did she tell you it was

cocaine?

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She said that's for afraid me up, to say white powder. They make conversation two things and really I don't know. That's the point.

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## 179a Miranda-cross

nda-cross 311

I'm not asking you what you know. I'm asking you what she told you.

A Oh.

What did she tell you?

A Yes. They say to me it's white powder for afraid me up.

Ω You say you were afraid?

A Naturally.

O Did you think that you ought to get some help?

A Help from what?

Q To protect you from Gloria Rodas, of course.

A She know that -- After that she can, she can be no more friend of me.

And it was sufficient to you that you would no longer be Gloria Rodas's friend and that you didn't think that anything else should be done; right?

A Done what?

MR. LEVIN-EPSTEIN: I ask for the interpreter's assistance on the question, your Honor.

THE INTERPRETER: When she told me that she didn't want -- I didn't want -- When she told me that I didn't want to know anything about her, then the following day there was a party at my place.

Q Wait. This isn't -- This hasn't anything

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22 Agent Schnaken
23 BY MR. LEVIN-EPSTEIN:

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Q Was it similar to this bag?

A Something like that.

Agent Schnakenberg.

#### 181a 313 1 Miranda-cross 2 Was it the same color? 0 3 I don't remember the color. 4 You don't remember the color. What kind of 5 car was it? 6 I would think an LTD or something like that. A 7 0 Do you know? 8 I can't say now. I can't see the car. 9 What was Gloria Rodas wearing on that day? 0 10 I don't remember. 11 You don't remember. And you don't remember 0 12 what you were wearing? 13 No, sir. 14 And you opened the bag up, and what else was in the bag besides the white powder that you found? 15 16 A Nothing more. That's all? Nothing else in the bag? 17 Nothing else. 18 What did you do when you found the white 19 powder in the plastic bag? Did you pick it up? 20 I closed the valise and that's where we 21 reached the point where we got the body and fender. That's 22 the -- I say to her, "I know you got this thing over here. 23 I never drive with you in this car."

If you bring this in your car, I would have 0

What did you say?

I said, I know that I don't drive with her in

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A

No, sir. The only one there was the two sisters.

1			1044	
			Miranda-cross	316
2		5	No barmaid there?	
3		ν	Yes, the barmaid. I no have nothing to	talk
4		Q	There was nobody else in the bar beside	s
5	Gloria	Rodas'	s two sisters?	
6		А	And the barmaid.	
7		0	And the barmaid. Did you tell the barm	aid?
8		A	No, sir.	
9		0	Who was the barmaid?	
10		Λ	She don't work no more with me.	
11		0	What's her name?	
12		A	Impora.	
13		0	Impora? What's her first name?	
14		Λ	That's the first.	
15	(	0	What's her last name?	
16		n .	I think Valasquez.	
17	(	)	Valasquez?	
18	,	Λ.	Valasquez.	
9		2	Impora Valasquez?	
0		Λ	Valasquez, I think. I am not sure. Imp	pora
1	is the	first n	name.	
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# Miranda - cross

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Miranda	

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### CROSS-EXAMINATION

BY MR. LEVIE-EPSTEIN: (Cont.)

Q You didn't tell Impora about the cocaine inthe car, did you?

> A No.

And you didn't go to the police? 1)

A No, sir.

Did you call the agents, the Narcotics agents

up? 10

> Λ No, sir.

Did you call the FBI?

A No, sir.

Did you call anybody and tell anybody that there was cocaine in that car?

A No, sir. They wasn't in my bar. They no pick me up.

> 0 Come and pick you up?

A Sure.

Why would they come and pick you up? Q

Because they say I sell the cocaine, why they Λ no pick me up.

Q No. I'm asking you, Mr. Miranda, whether or not it's a fact.

A The Government a thousand dollars.

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THE COURT: Wait a minute.

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it's a fact that after you say you saw the cocaine already in the bag, isn't it a fact that you never went to the police

or any other law enforcement agencies?

A I don't know it's cocaine. I don't know it was cocaine.

MR. TODEL: Objection.

THE COURT: We've been over this a couple of

I'm asking you, Mr. Miranda, whether or not

times, Mr. Levin-Epstein.

MR. LEVIN-Epstein: I believe we have, your

Honor.

BY MR. LEVIN-EPSTEIN:

Now, while you were travelling in the car with Gloria Rodas, you said that the only conversation you had had to do with your damaged vehicle and with her having you open the bag and threatening you with this cocaine?

What did she tell you she was going to do with it?

A I don't know.

She didn't say anything to you?

A She don't say anything.

Q Did she say, "Menola, I'm going to put this on you"? Did she say, "Menola, I'm going to tell the cops that you've got the coke"? No? Did she say, "Menola, every body

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Miranda - cross

is going to know that you're a dealer in cocaine because they're going to find this on you"?

No, sir.

Never said that to you, did she? Q

No, sir.

Isn't it a fact that she said to you, "I can't Q make the whole buy, I can only take \$6,000 worth"?

> A No, sir.

Q That's a lie?

A That's a lite.

Isn't it a fact that you opened up the package that you had on your person and asked her if she wanted a taste?

No, sir. That's a lie You want to put --

Isn't it a fact that when you said to her you want a taste, she said to you, no, if you can trust me for \$4000, I'll trust you that it's as pure as you promised?

> A No, sir.

That's a lie?

That's a lie. You put me -- you want put the lie detector on me and her. That's it.

I thank the witness for his gratuitous remarks about the polygraph.

THE COURT:

320	ı
ck to the questions.	
aine in that bag, did you	\$
that when you left the wn car, right?	
er car after finding out	

A Anytime you like.

THE COURT: Let's stick to the questions.

#### BY MR. LEVIN-EPSTEIN:

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- Q You never put this cocaine in that bag, did you?
- A Never, sir.
- Is it a fact, though, that when you left the car you went and you picked up your own car, right?

188a Miranda - cross

- A Yes, sir.
- Q No doubt about that?
- A No doubt.
  - Q That you are sure of?
- A Sure.
- Q Did you come back to her car after finding out that your car was ready?
  - A No.
  - Q You never came back to her car?
    - A I get my car, so she was driving my back.
- Q Did you ever tell her to meet you back at the Jaguar?

A No. I go down to the Jaguar. After she passed to the Jaguar, she told his friend, wait for me,he have to go down someplace else.

- Q So she stopped at the Jaguar, too?
- A Yes, sir.

189a 5 Miranda - cross So she was lying about that, too? Q Yes. MR. TODEL: If the Court pleases, I haven't interrupted. THE COURT: Don't make any grimaces. REally, there is no need to repeat a witness' answer. Just go ahead. MR. LEVIN-EPSTEIN: I'm repeating it so I'm sure that I have it right, too, your Honor. THE COURT: Proceed. BY MR. LEVIN-EPSTEIN: Q What did you do after you arrived back at the Jaguar Lounge? A I stay in the bar about -- approximately one hour, one and a half. About an hour? What were you doing there for Q 17 that hour? 18 . I was with Toni. And the other girl. She 19 spend money and I try to cook for her. 20 I'm sorry? 21 I cook for her. I sell steak in my place so 22 I make three steaks for the three girls. She want to eat.

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Q And Gloria never told you that she had to drop the cocaine somewhere else and that she had been back to the Jaguar afterwards?

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1	6	!90a Miranda - cross	322
2			
	A	She said she go someplace.	•
3	Q.	She did tell you she was going somep	lace else?
4	A	She told me and the two sisters was t	here.
5	Q	Did there come a time on April the 2r	nd of this
6	year, 1974, w	then you met with Gloria Rodas?	
7	A	Yes, I think so.	
8	Q	Yes or no?	
9	A,	Yes.	
10	Q	You did meet with her that day?	
11	Α	Yes.	
12	વ	Where did you meet with her that day?	
13	Α	In my bar.	
14	Q	What time was that?	
15	Α	I don't remember the time.	
16	Q	You don't remember.	
17		Who else was with her then?	
18	Λ	The two sisters.	
19	Q	The two sisters again?	
20	A	Yes.	
21	Q	Where did you meet with her within th	e bar?
22	A	In the bar.	
23	Q	Where the drinks are served?	
24	A	The drinks are served.	
25	Q	Did you ever go down in the basement	with her?

I was cooking downstairs and she pass by because Let me ask you this question, Mr. Miranda: In the Jaguar Lounge, there is an area which is devoted to the service of drinks, right, the bar? That's the bar, the floor and in the basement was the bathroom and the toilet and the kitchen. Okay. So the kitchen is downstairs from where On April 2, 1974, did Miss Gloria Rodas go down Did you have a conversation with her at that No. Nothing. We were talking about the Toni, Toni is in love with me or something like that. And you didn't have any conversation at that time about cocaine?

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1	192a 324
2	8 Miranda - cross
	A Not about cocaine.
- 3	And you never received any money from her on that
4	day?
5	A Never in my life.
6	Q Did you ever receive any money from her at
7	
8	A She pay everything and she drink and she eat.
9	Q Just for what she drank. How much money was
10	that, about?
11	A She spend every time she go down over there, that's
12	the sometimes 75, 100, \$50.00. She could spend because
13	she - everytime she go, she eat steak.
14	Q You've answered my questions. She never gave
15	you \$6000 in the car, though?
16	A No, sir.
17	Q She never gave you \$4000 in the restaurant?
18	Right?
19	A . No, sir.
20	Q Did there come a time in May of this year,
21	specifically May 8, when you met with Gloria Rodas?
22	A Yes, sir.
23	Q Was she with anybody else at that time?
24	A The two sisters and his brother.

Whose brother?

	193a 325
	9 Miranda - cross
:	A His brother.
3	Q Whose brother?
4	A The one in the picture. Mr. Melendez.
5	Q You are referring to Defendant's Exhibit B,
6	this photograph?
7	A Yes. That's his brother. She introduced
8	me his brother.
9	MR. LEVIN-EPSTEIN: Let the record indicate
10	the agent Octavio Pinol, your Honor.
11	Q This agent was introduced to you as Gloria's
12	brother?
13	A Yes, sir.
14	Q How many times did you meet with the agent?
15	A That day, May 8 and May 9.
16	Q And where did you meet with him on May 9th?
17	A In this picture taking, the Patio nightclub.
18	Q In the
19	ElPatio?
20	A Right.
21	Q On May 8, when you met with the brother, as
22	you were introduced to him, of Gloria Rodas, did you have
23	a discussion about Puerto Rico?
24	A No, sir.

Never talked about Puerto Rico? Did you have

Q

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	195a
GR"GA	Miranda - cross
T2R4PM <sub>2</sub>	Q So you stopped being friendly with her on May 8?
3	
4	Q And with her brother?
5	A Yes, sir.
6	Q You told her that you didn't want to see her
7	again?
8	A I told her They start talking me about this
9	kind of thing. We broke them up relations.
10	Q But she asked you to sell cocaine to her brother?
11	A Yes.
12	Q According to you? And you refused?
13	A I don't refuse nothing. I have nothing to do with
14	that.
15	Q By the way, were you present when Agent Pinol
16	testified?
17	A Yes, sir.
18	Q Did you hear his testimony?
19	A Yes, sir.
20	Q Was he speaking the truth?
21	A Speaking the truth, because the only say I'm sorry
22	for my language, but they My lawyer say I can say, you know,
23	the real the way it is. He was
24	Q I am not speaking about your language, Mr. Miranda.
25	I'm asking you this question specifically. When Agent Pinol

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# Miranda - cross

testified here last week, you were present? You were sitting right there; were you not?

- A Yes.
- You heard his testimony, right?
  Was he telling the truth?

MR. TODEL: Objection to the form of the question, your Honor. If he puts the question specifically what the Agent said, and whether -- rather than a general --

THE COURT: I think that's right. Do not ask him generally.

MR. LEVIN-EPSTEIN: Very well, your Honor.

- You heard Agent Pinol testify that he had a conversation with you that night; right?
  - . A Yes.
    - Q On May 8th? That was the truth; wasn't it?
    - A She talk on the introduce with me, but --
    - Q If you can answer the question yes or no?
    - A Yes. Maybe he ask questions.
- You heard him testify that he was introduced to you as the brother of Gloria Rodas; right?
  - A Yes.
  - Q There is no question about that; is there?
  - A Yes.
  - Q You heard him testify that he had a conversation

THE COURT: If you want it that way, yes. Get the page and line.

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No. The question I am asking you, Mr. -- Perhaps

I am not being clear. Were you present --

THE INTERPRETER: Can I explain?

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	199a
1	Miranda - cross 331
2	A (continuing) Thank you for taking care my sister
3	because I take care his sister.
4	THE COURT: Did he say, Thank you for taking care
5	of my sister?
6	THE WITNESS: What?
7	THE COURT: Did
8	THE WITNESS: He say, Thank you, but I don't know
9	why he talking about why he say thank you.
10	Did you hear him testify to that in court?
11	A Yes.
12	Q Okay.
13	And moving on, Mr. Todel, Mr. Todel, I am now
14	reading from page 187, the last line, line 25 or 24.
15	I asked the question, "Go on."
16	"Answer: And we exchanged general conversation
17	there. And later on, Gloria asked him, I was going back to
18	Puerto Rico on Saturday, 11th, and he had the kilo of cocaine
19	for me to bring to Puerto Rico."
20	Did you hear him say that on the witness stand?
21	A No, sir.
22	Q No.
23	On the witness stand, did you hear him say that?

You didn't hear it on the witness stand? Did he

No, sir.

Her? I first time go out with her was five min-

utes to the Jaguar, to the body fender.

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1		201a
2		Miranda - cross 333
		That's the only time? Did you ever borrow any
3	money from	ner?
4	A	No, sir.
5	Q	Did you ever loan any money to her?
6	λ	No, sir.
7	0	Did you ever know any members of her family?
8	A	The family, the two sisters.
. 9	O	Just the two sisters. Did she know any members
.10	of your fami	ly?
- 11	A	No, sir.
12	Q	Did you ever visit with her at her home?
13	A	No, sir.
14	Q	Did she ever visit with you at your home?
15	A	Never in life.
16	Q	I'm sorry?
17	A	Never in his life he come step inside my house.
18	Q	She never stepped inside your house.
19		How would you say you know the witness Gloria
20	Rodas?	
21	A	March. Something March. Pebruary. I don't re-
22	member.	
23	Q	Would you say she is a good friend of yours?
24	. A	Good friend? Good customer. She good customer.
25	Q	Good customer?

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MR. LEVIN-EPSTEIN: No further questions, your Honor.

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THE COURT: All right. Any redirect?

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MR. TODEL: Yes.

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THE COURT: Go ahead.

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#### REDIRECT EXAMINATION

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BY MR. TODEL:

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Mr. Miranda, just a few minutes ago the Assistant U. S. Attorney was asking you some questions with reference to Agent Pinol, when there was a conversation in the bar, when Gloria Rodas was there, and Agent Pinol was there. Do you re-

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member that?

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Yes, sir.

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What did Gloria Rodas tell you about Agent Pinol?

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It was his brother. He got a lot of money, want to buy some cocaine. So I say, you know, like I say before,

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go to hell, something like that. I no want you talking me some

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thing like that, because I don't want to lose my place.

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Mr. Levin-Epstein, who is the United States Attorney, asked you that Agent Pinol, whether or not you heard his

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testimony here last Wednesday. Do you ramember him testifying

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there?

Yes, sir.

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Do you remember him saying something about you Q

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said something about you didn't want to serve five or ten years?

Did he testify here in court; is that correct?

A Yes, sir.

What did you say to him with reference to anything about serving five or ten years, or did you say anything about that?

A I don't say nothing about that. I say I was mad with Gloria. I once said, you put thing like that over here, and something for talking -- something about drug, or something you can be in jail for five or ten years. You know, she questioned me. She say, got some money, his brother, for that. Only for -- I told her, mention drug over here, I got five, ten years in jail.

Q Is that what was said?

A Yes.

Q Is that what you said?

A Yes.

MR. TODEL: No further questions.

MR. LEVIN-EPSTEIN: I have no further questions.

THE COURT: All right. You can step down. Thank you, Mr. Miranda.

(continued on next page.)

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MR. TODEL: If the court pleases, the defendant rests.

THE COURT: Is the Government going to put in any further testimony?

MR. LEVIN-EPSTEIN: One moment, your Honor.
(Pause)

MR. LEVIN-EPSTEIN: The Government rests.

after four. It is really too late to start summations tonight. I would have liked to finish the case today, but we need to have time for everyone to do their jobs properly. I will excuse you until ten o'clock tomorrow morning.

While you have heard all the evidence, you have not heard the summations by counsel or the charge of the Court.

Do not talk about the case among yourselves or with anyone at home or with anyone in the courtroom. You are excused until ten o'clock tomorrow morning.

(Jury leaves the courtroom.)

THE COURT: Mr. Todel, in your requests you want the elements of 841(b) among other things.

I doubt if you really mean that. That is the

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punishment, and I do not charge that. 841(a)(1) is what is involved. You want a definition of knowingly and willfully. There is no "willfully" in the statute. Intentionally is there, and I will cover that.

'IR. TODEL: I just want to state for the record, that at the end of the whole case the defendant respectfully moves for a judgment of acquittal.

THE COURT: Yes.

Mr. Levin-Epstein, this is not the first time that the Drug Administration has fouled up tapes.

MR. LEVI (-) POPELI: No, it is not.

THE COURT: The Court of Appeals in U.S. v. Bryant in the District of Columbia in 1971 -- 448 F.2d 1182 -- said that if there, were more violations, there might be drastic sanctions.

What justification is there for this loss that took place here?

MR. LEVIN-EDSTRIN: I can only indicate to the Court what the agents have told me and what has been alluded to on the witness stand today, that this particular tape was misplaced because of the business of the office. I might indicate to the Court that this case is distinguishable from Bryant on a number of different grounds.

First of all --

THE COURT: In Bryant the tape was unintelligible. Here there is no testimony that there was -
MR. LEVIN-EPSTEIN: The testimony was that
the tape was clear.

Let me point out further in respect to this tape that the tape itself would have been cumulative in nature as to the testimony of the agents.

THE COURT: If it confirmed the testimony.

MR. LEVIN-EPSTEIN: It definitely would be.

THE COURT: It may have been blank, or may have shown that they were talking about the baseball season.

MR. LEVIN-EPSTEIN: It most definitely might have in the hypothetical, however, the testimony was that it would have corroborated what Agent Costello spoke of. I might point out that if the tape was exculpatory -- hypothetically, of course -- or if the tape was blank, as the Court suggests, then it would have been a much simpler matter if the Government was intending to defraud the Court not to mention any tape, rather it was brought out that there was such a tape.

Secondly, it was brought out not only that
the tape was made, but it was clear, and I think
your Honor, if the Government were to bring evidence

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of this sort out -- recognizing that it is inevitable that it must be brought out that the tape was lost, it hardly shows the same as in Bryant where the Court of Appeals looked to sanction the Drug Enforcement Administration for the improper treatment of evidence, as opposed to the negligent treatment of evidence.

THE COURT: The Court of Appeals said on the second ground that it was not Governmental bad faith, but negligence was enough to be a serious matter.

MR. LEVIN-EPSTEIN: We have to recognize that negligence is not necessarily a black or white situation. What can be negligent and what can be so culpable as to require the sanctions suggested by the Court of Appeals. I have to say to the Court that I amnot as conversant with Bryant as the Court is. My understanding of that case was that the sanctions of not admitting evidence or perhaps even the dismissal of a case was such an extraordinary sanction that it would not be exercised by the Court of Appeals or the District Court under the aegis of that decision, unless it was such an extraordinary case.

THE COURT: Well, it was three years ago, and I would have thought the Drug Enforcement

Administration would have put in more safeguards.

I will deny the motion and consider it further later.

MR. TODEL: May I point out to the Court that other testimony during the course of this trial -- namely, the witness Gloria Rodas -- was that she had a Kel transmitter on her on the 20th and as far as the testimony came in in this case, no one knows where that tape is either.

MR. LEVIN-EPSTEIN: Oh, no.

THE COURT: You did not go into that either.

I have not asked for a full exposition of which tapes
were made available to you. I will not hear argument on that on the record.

I think you have an argument to the jury and

I would like -- if there is a conviction -- to consider

it a little further. At present I deny your motion.

Now with respect to the missing witness charge. Georgie has been made available to the defendant, although not under ideal circumstances. Tony has not been.

MR. LEVIN-EPSTEIN: She is equally available to the defendant.

MR. TODEL: I don't know. That may be a statement by Mr. Levin-Epstein. From my conversation

209a

with Georgie she did state: "Well, you can't put
me in the position of giving the name of this woman.

I don't know if she would like it if I did."

The Government is in a much better position than any defendant's attorney to find out that information, especially when the witness Gloria Rodas also testified that she knew this woman Toni for a number of years.

MR. LEVIN-EPSTEIN: The Court is well aware of the circumstances that arise out of a case where an informant testifies, recognizing the perils to that person and other persons. Where Mr. Todel says I would have more authority or power -- whether legal or mythical -- I do not see how I could convince Georgie to tell me what she did not want to tell him. If Mr. Todel does not acknowledge that I am telling the truth, I will take the stand.

THE COURT: You could have dragged her before a grand jury and hammered it out of her. It is a little late to do that now .

MR. LEVIN-EPSTEIN: The only use of grand jury testimony accepted by the courts would be an investigation as to new offenses.

The Government has no desire nor any reason to clal Tony as a witness. The Government upon the

request of Mr. Todel did make inquiry, and upon the instructions of the Court did make inquiry of Georgie and Gloria Rodas as to her availability and her location. We were rebuffed on both requests. I do not see how I can compel one of these people to tell me

If Mr. Todel wants Georgie to give up the location of Toni, let him call her to the stand and make an argument that she be held in contempt if she does not answer the question.

that under any theory of law that I am familiar with.

THE COURT: Our Second Circuit has said that missing witness instructions is required only if the Court determines that the witness is in fact more accessible to one side than the other. I do not know if I could make that finding here, Mr. Todel.

'AR. TODEL: Is the Court saying that Georgiethe fact that the Government produced her at the end
of the Government's case as a witness, is sufficient
for a defendant's attorney to say that he is going
to make the decision immediately after speaking to
this witness in the United States Attorney's office
and to evaluate as to what her testimony would be,
unless one goes further in terms of investigation and
in addition, your Honor, the Government knows or
knew or should have known that Toni was an important

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witness in this case, that she was present at almost every conversation and every meeting with this particular defendant. In fact, the relationship was a fairly close one during the course of the short period of time that Toni and the defendant were known to each other.

MR. LEVIN-EPSTEIN: Your Honor --

MR. TODEL: Gloria Rodas knew this woman. I can only state from what Georgie said, "You are putting me on a spot. I do not feel right to tell you where she is located," that --

THE COURT: Of course, the actual transaction was between the defendant and Gloria.

MR. LEVIN-EPSTEIN: That is right.

THE COURT: Mr. Levin-Epstein, there might have been things said that would have a bearing. It is a rather serious matter. In the absence of the witness, the assumption would be that the testimony would be unfavorable to the Government --

MR. LEVIN-EPSTEIN: When Gloria Rohas first took the stand and testified -- after a side bar if you recall -- it was brought out that a woman, who was identified to Mr. Todel, appearing in the indictment with Gloria, was there. Mr. Todel knew at that point that there was such a person as Georgi, and her true name. He could have asked at that point after hearing Mrs. Rohas's testimony to have her provided. The Government received no such request until this morning.

THE COURT: Maybe so. There was certainly an intimation by the Government that they would be reluctant to produce her because of fear. I think we have to go ahead and go to the jury. As of now I am inclined not to give the missing witness charge.

MR. LEVIN-EPSTEIN: Thank you.

MR. TODEL: Maybe by tomorrow, if I could convince the Court --

THE COURT: Look up the cases and see if there is anything.

I want to get started early tomorrow morning.

MR. TODEL: May I make this statement —
Throughout the trial, at the side bar there have
been made statements with reference to the fact
that Gloria Rohas or Georgie may be in danger. I do
not know as far as my client is concerned — it is
true, these people may have been involved in a very
serious case for which they received probation while
the main people received a sentence of ten or twelve
years. The whole implication of Mr. Levin-Epstein
is that they are in danger of possibly from my client.

The danger may be that these people were involved in an indictment where people received ten, twelve year sentences.

THE COURT: I do not think any of that got to the jury.

MR. LEVIN-EPSTEIN: That is right.

THE COURT: Certainly Mr. Levin-Epstein didn't produce any evidence that threats had come from Mr. Miranda. I think nothing more need be said.

Good night. I will see you in the morning.

MR. LEVIN-EPSTEIN: Thank you.

MR. TODEL: Thank you.

214a
DEFENDANT'S EXHIBIT B - PHOTOGRAPH



NOTICE OF MOTION TO SET ASIDE VERDICT AND TO ENTER A

JUDGMENT OF ACQUITTAL

UNITED STATES DISTRICT COURT (Dated October 11, 1974)

215a

EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, :

- against -

74 CR 409

ORLANDO MIRANDA,

Defendant. :

SIR:

PLEASE TAKE NOTICE that upon the affidavit of MORTIMER TODEL, sworn to the / day of October, 1974, upon the record herein and upon all the papers and proceedings heretofore had herein, the undersigned will move this Court before the HON. ORRIN G. JUDD, United States District Court Judge, at the United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York, at 10 A.M. on October 18, 1974, for an order pursuant to Rule 29(c) of the Federal Rules of Criminal Procedure setting aside the verdict and entering a judgment of acquittal in the above entitled action, or in the alternative, granting a new trial of said indictment, pursuant to Rule 33 of the aforesaid rules and for such other and further relief as to this Court may seem just and proper.

Dated: New York, New York October // , 1974.

MORTIMER TODEL

Attorney for Defendant One Rockefeller Plaza New York, New York 10020

TO:

HON. DAVID TRAGER United States Attorney for the Eastern District of New York United States Courthouse 225 Cadman Plaza East Brooklyn, New York 11201

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

- against -

74 CR 409

ORLANDO MIRANDA,

Defendant.

STATE OF NEW YORK )

: SS.:

COUNTY OF NEW YORK )

MORTIMER TODEL, being duly sworn, deposes and says:

This affidavit is submitted in support of defendant's

motion pursuant to Rule 29(c) of the Federal Rules of Criminal

Procedure to set aside the verdict and enter a judgment of

acquittal with reference to the indictment or, in the alternative,

pursuant to Rule 33 of the aforesaid rules, to set aside the

verdict and for a new trial.

Your deponent is well aware that the defendant's motion must be reviewed by the Court in a light most favorable to the Government. At the same time, it is most respectfully submitted to the Court that the Court may in its discretion, in the interest of justice, set aside this verdict, acquit, or in the alternative, grant a new trial.

The fact elicited during the course of the trial with reference to the crucial day of March 25, 1974, were as follows: Mrs. Rodas stated that she was in the automobile with the defendant and that she had received ten ounces of cocaine from him and she, in turn, had turned over to him \$6,000.00. The defendant denied this. Mrs. Rodas testimony was corroborated by

Affidavit of Mortimer Todel in Support of Motion 217a Agent Castillo, who stated that he overheard the conversation in the automobile as a result of the Kel transmitting device which transmitted live voices to the car in which Agent Castillo was riding and, at the same time, recorded the conversation on tape. At no time was your deponent advised by the U.S.Attorney's office that a tape had at one time existed of the March 25, 1974 conversation, and that it had been lost. The U.S. Attorney's office had turned over to deponent a copy of the tape and transcription of a conversation of April 2, 1974, and also made available for deponent to listen to tapes which were made during the month of May 1974, prior to trial in conformance with my request for discovery.

It was only on the first day of the trial when the Government turned over, pursuant to your order, 3,500 material that it appeared that Mrs. Rodas had worn a Kel transmitting device on March 20, 1974 and also on March 25, 1974. Your deponent reading this in the morning during the course of the trial still did not know whether the tape did or did not exist.

During your deponent's tross examination of Mrs.Rodas at Page 93 of the transcript when Mrs. Rodas answered the question that she was wearing a transmitting device on March 25th your deponent approached the bench and requested the tape. Even at this particular point, the prosecution did not disclose to your deponent or to the Court that the tape was lost.

Although we do have an adversary system, it is most respectfully submitted to the Court that such disclosure of the lost evidence gathered by the Government would fall under required disclosures. Even in the <u>U.S. vs. Bryant</u>, 439 Fed.2d. 642, 646, the Government advised defense counsel prior to the trial that a tape had been made but it had apparently been lost.

Affidavit of Mortimer Todel in Support of Motion

The Government even in its examination of the Case Agent Schnakenberg, at Page 129, still did not bring out the fact that a tape was lost. For the first time, your deponent learned that the conversation of March 25, 1974, which was crucial in this case, had been taped but that no one in the Government knew where that tape was. (Page 137). Again, at Page 145 of the transcript, the Government states that every tape that was made has been played for your deponent but really fudges the question as to whether or not the tape of March 25, 1974 was made available to deponent. Again, the Government in its examination of Agent McMullan again attempts to fudge the record when over objection the agent is permitted to answer the question as to why some times a recording is not made and the agent answers that it is used in that fashion to protect informants. On cross-examination, Agent McMullan at Page 168, stated that the tape of the conversation of March 25, 1974, was the clearest of all the tapes but that no one knows where it is.

Agent Castillo testified to the effect that he does not know what happened to the tape; that he made no record of the conversation that he is alleged to have overheard on the Kel transmitter, and that at Page 220 of the transcript stating that no one in the Drug Enforcement Bureau made any memorandum as to what he had told them he had overheard. Also, as far as the knows, there is no record made of the lost tape.

Agent Schnakenberg, who was recalled to the stand, testified that at Page 248, and thereafter, that he does not remember exactly when he learned that the tape was missing and also the fact that he did not make a record of the fact it was missing, nor did his supervisor, Agent McMullan, made such a record.

Affidavit of Mortimer Todel in Support of Motion 219a

The importance of this tape which the Government's witnesses stated was a very clear tape, is the fact that the April 2, 1974 conversation, which was transcribed and ran for approximately eight pages, made no mention of the \$4,000.00 which was alleged to be turned over to Miranda on that day. In addition, the transcriptions in May, 1974, contained no mention of the conversations to which the Government's witnesses testified. On Friday, September 20, 1974, after appearance before the Court, the Government played back the transcriptions of May 1974, most of which were inaudible. The Government at that time made absolutely no mention to your deponent that a tape had been made of March 25, 1974 and had been lost.

The burden should not have been placed upon the defendant during the trial of showing the tape was lost, but it was the obligation of the Government to show that it promulgated, enforced and attempted in good faith to follow rigorous and systematic procedures to preserve all discoverable evidence in the course of a criminal investigation. The Government failed in its obligation.

Finally, the offer of the Government at the end of its case to make witnesses available to the defense, excluding Toni, when the Government knew that, in fact, these witnesses would not be available for the defendant in preparation of a defense, was merely a ploy to avoid a possible charge as to witnesses under the control of the Government. To put such a burden upon the defendant at the end of the Government's case was most unfair.

WHEREFORE it is respectfully requested that the

Affidavit of Mortimer Todel in Support of Motion 220a Court grant a defendant's motion for judgment of acquittal or,...
in the alternative, a new trial.

Sworn to before me this

May of October, 1974

My Min Today

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FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

OPINION OF JUDD, D.J. DATED NOVEMBER 21, 1974

NOV 2 5 1974

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

TIME A.M.... P.M....

UNITED STATES OF AMERICA,

74-CR-409

-against-

ORLANDO MIRANDA,

Defendant. : November 21, 1974

## Appearances:

HON. DAVID G. TRAGER United States Attorney Attorney for United States of America

By: ETHAN LEVIN-EPSTEIN, ESQ. of Counsel

MORTIMER TODEL, ESQ. Attorney for Defendant

JUDD, J.

## MEMORANDUM AND ORDER

The defendant has moved to set aside the verdict of guilty and either enter a judgment of acquittal or grant a new trial, F.R.Cr. P. 29(c), 33.

## Facts

After a three-day jury trial, defendant was found

guilty on two counts of distribution and possession with intent to distribute approximately 319 grams of cocaine.
21 U.S.C. § 841(a)(1).

The issue on the present motion relates to the loss of a tape which had been made of a crucial conversation between the defendant and the principal government witness. Gloria Rodas testified that while she was travelling with the defendant in her car on March 25, 1974, he placed a package containing the cocaine in an attache case that she had in the car, and she gave him \$6,000 as part payment of the \$10,000 agreed price. At the time she was equipped with a Kell transmitter, which permitted the conversation to be overheard and recorded by agents of the Drug Enforcement Administration (DEA) in a surveilling car.

DEA agent William Schnakenberg testified that he overheard a conversation in Spanish while he was following the witness' car, but that the tape of this March 25 conversation was not at DEA headquarters. DEA agent William McMullen testified that he was also in the surveilling car, that he heard the conversation and a translation which was made by James Castillo, a Spanish-speaking agent who was also

in the car, and that a tape was made, which was the clearest of all, but that he could not find the tape. Agent Castillo testified that he heard the conversation, and that it concerned the purchase and delivery of the cocaine and the partial payment. He said that he listened for a few minutes to the tape at DEA headquarters on 57th Street, New York on the evening of March 25, but that he had left before it was completed. He looked for the tape three months prior to the trial and two weeks prior to the trial and could not find it. He did not know who took it off the recording machine. The DEA has apparently produced all the other 30 or more tapes that were made in connection with the case.

Defendant testified at the trial that he had been in the car, but that he had not sold any cocaine. He said that Ms. Rodas asked him to take the attache case off the back seat and look at it. He opened it, and saw some white stuff. She said it was to make him nervous, and he said that he would not drive with it in the car. The package which Ms. Rodas and the agents testified about was wrapped in crinkly tinfoil.

Defendant admitted meeting Ms. Rodas the next day

at a party at his place, again at his place with her two usual women companions on April 2, again on May 8, and at El Patio on May 9.

The jury accepted Ms. Rodas' testimony and rejected defendant's explanation.

The United States Attorney did not disclose either the existence or the loss of the March 25 tape to defense counsel before the trial. Assistant United States Attorney Charles Clayman informed defense counsel at a pre-trial conference on June 13, 1974 that he had two tapes of varying clarity and that transcripts would be ready in the following week. The case was thereafter reassigned to Assistant United States Attorney Ethan Levin-Epstein. Mr. Todel informed the court when the case was reached for trial on September 23, 1974 that he obtained the transcripts only on September 9 or 10, and that he could not intelligently evaluate the tapes without an interpreter because they were in Spanish. Mr. Levin-Epstein stated that he had other tapes, which were inaudible, and that the Government did not intend to use The court agreed to provide an interpreter at the trial if required, but saw no reason to grant an adjournment

because of defense counsel's failure to listen to all the tapes before trial.

When the trial began on September 24, the government supplied in advance all the § 3500 material with respect to Gloria Rodas and the government agents. None of this material referred to the tape of the March 25 conversation. The existence of such a tape was first disclosed during Mr. Todel's cross-examination of Ms. Rodas in the morning of September 25, 1974.

September 25 being a Thursday and the court's practice being to devote Fridays to motions, sentences and other matters, the trial was adjourned over the weekend to Monday, September 30, 1974, before Mr. Castillo testified. Defendant was permitted to recall Agent Schnakenberg, who stated that the tape recorder which Ms. Rodas had used was not missing, but that he had not been able to find the cassette of the conversation a few days later when he wanted to give it to the interpreter. Mr. Schnakenberg looked for the tape for several days and told the group supervisor about his loss, but he made no notes of the conversation which was recorded on the tape.

## Discussion

There have been a number of cases of lost evidence, which have given rise to a general rule that the court may determine in its discretion whether to exclude evidence or grant a new trial, depending on the degree of government culpability for the loss and the degree of prejudice to the defendant.

In <u>United States</u> v. <u>Augenblick</u>, 393 U.S. 348, 89 S.Ct. 528 (1969), the court held that where there was no evidence of active suppression the court can determine that the loss was not so significant as to violate Sixth Amendment rights.

In <u>United States</u> v. <u>Perry</u>, 471 F.2d 1057, 1068 (D.C. Cir. 1972), the court said that

If, even after finding some degree of negligence, the court finds the risk of prejudice to the defense slight, it can refuse to impose the Jencks Act sanctions.

In <u>United States</u> v. <u>Bryant</u>, 439 F.2d 642, 652 (D.C. Cir. 1971), the court refused to reverse a conviction where a tape had been lost, stating

[W]e hold that sanctions for non-disclosure based on loss of evidence will be invoked in the future, unless the Government can show that it has promulgated, enforced and attempted in good faith to follow a rigorous and systematic procedure designed to preserve all discoverable evidence gathered in the course of a criminal investigation. The burden, of course, is on the Government to make this showing.

In the <u>Perry</u> case, the district court was reversed for excluding the testimony of a witness whose grand jury minutes had been lost. The Court of Appeals there noted that it was a court reporter and not the prosecution which lost the notes, and said:

As we said in <u>Bryant</u>, we have adopted a balancing approach for these cases which gives broad discretion to the trial court.

Other circuits have been less strict than the D.C. Circuit in penalizing negligent loss of evidence. In <u>United States v. Sewar</u>, 468 F.2d 236 (9th Cir. 1972), the court refused to suppress a chemical analysis of a blood sample in spite of the fact that the sample had been lost, saying that the non-preservation was unintentional and not evidence of bad faith. In <u>United States v. Love</u>, 482 F.2d 213 (5th Cir. 1973), the court distinguished between "blunder" and "suppression" and refused to reverse.

After considering government culpability, the court should evaluate the second factor, prejudice to the defendant. For example, in the <u>Bryant</u> case, after the district court on remand found that the agents had been negligent but the tape had been unintelligible, the court affirmed the conviction, <u>United States</u> v. <u>Bryant</u>, 448 F.2d 1182, 1184 (1971) saying:

[U]nder the more pragmatic balancing approach which we have adopted for these cases, the unintelligibility of the tapes - when compared with the very strong evidence of guilt adduced at trial - outweighs the negligence involved in the loss of the tape.

See also <u>United States</u> v. <u>Lemoniakis</u>, 485 F.2d 941 (D.C. Cir. 1973); <u>United States</u> v. <u>Ashe</u>, 478 F.2d 661 (D.C. Cir. 1973).

The cases in which indictments have been dismissed or new trials granted have involved the loss of masses of evidence critical to a trial. See <u>United States v. Heath</u>, 147 F.Supp. 877 (D. Hawaii, 1957); <u>United States v. Consolidated Laundries Corp.</u> 291 F.Supp. 563 (S.D.N.Y. 1961). In <u>United States v. Banks</u>, 374 F. Supp. 321, 328 n.2 (D.S.D. 1974), the court held that dismissal for lost or destroyed

evidence is justified only "(1) where the government fails in its heavy burden of proving that it made earnest efforts to preserve the evidence \* \* \* and (2) where the lost evidence is so vital to the defense that a fair trial is impossible without it."

In most cases, the courts have felt that measures less drastic than dismissal or retrial, such as recalling witnesses and permitting argument to the jury concerning the subject, were sufficient.

In this case, defense counsel have not indicated any major differences in procedure which would have been followed at the trial had the loss of the tapes been known from the beginning. There were at least three witnesses to the March 25 conversation: Ms. Rodas, Agent Castillo, and the defendant, all of whom testified. Agents McMullen and Schnakenberg heard Mr. Castillo's contemporaneous translation of the conversation. They were not permitted to testify as to what he said, but their testimony might counter any claim that the tape would have been exculpatory. If the tape had been preserved it might conceivably have shown that all the government witnesses were lying, but it might also

have confirmed the government witnesses' testimony and been of no avail to the defendant.

The defense had a long week-end in the middle of the trial to seek out any further information concerning the loss of the tapes. The defense was permitted to cross-examine the government agents concerning the missing tape, and had full opportunity to make the most of the matter in the summation to the jury.

While the missing tape could have been of significant use to the defendant, if it contradicted the testimony of government witnesses, and while its loss indicates negligence on the part of the government agents, the court cannot find that the loss was intentional or in bad faith or that the absence of the tape deprived defendant of the right to a fair trial.

Defendant also asserts that the loss of the tape should have been disclosed before trial under the principle of Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963).

Normally, the government's responsibility is to disclose exculpatory material at the time of trial and not by way of discovery, although Judge Frankel has held that there are

cases where it should be disclosed in advance in order to be useful, <u>United States v. Deutsch</u>, 373 F.Supp. 289 (S.D.N.Y. 1974). In this case, the absence of the tape gave defendant what the court described (S.M. 144) as "a pretty good argument for the jury", and in fact Mr. Todel tried to state this to the jury (S.M. 364-65, 367).

There is no indication that any further evidence could be produced on a new trial or that the defendant would have been materially better off had he known of the lost tape earlier than he did.

It is ORDERED that the motion for a judgment of acquittal by the grant of a new trial be denied.

U. S. D. J.

UNITED STATES COURT OF APPEALS: SEC	OND CIRCUIT
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Index No.

USA,

Appellee,

- against -

Affidavit of Personal Service

ORLANDO MIRANDA.

Defendant-Appellant.

STATE OF NEW YORK, COUNTY OF

\$5..

I, James Steele,

depose and say that deponent is not a party to the action, is over 18 years of age and resides at
250 West 146th, Street, New York, New York

That on the 27th day of January 1975 at 225 Cadman Plaza, Brooklyn, New York

deponent served the annexed

appellants Brig

upon

David G. Trager

the in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the Attorney(s) . herein,

Sworn to before me, this 27th day of January 1925

JAMES STEELE

ROBERT T. BRIN
NOTARY PUBLIC, STATE OF NEW YORK
NO. 31 - 0418950
QUALIFIED IN NEW YORK COUNTY
COMMISSION EXPIRES MARCH 30, 1975

